Volume 3 of 3, Part B
VIII. EXHIBITS ADMITTED (IN NUMERICAL ORDER)

H. Res. 15

In the House of Representatives, U. S.,

January 13, 2009.

Resolved, That in continuance of the authority conferred in House Resolution 1448 of the One Hundred Tenth Congress adopted by the House of Representatives on September 17, 2008, the Committee on the Judiciary shall inquire whether the House should impeach G. Thomas Porteous, a judge of the United States District Court for the Eastern District of Louisiana.

SEC. 2. The Committee on the Judiciary or any subcommittee or task force designated by the Committee may, in connection with the inquiry under this resolution, take affidavits and depositions by a member, counsel, or consultant of the Committee, pursuant to notice or subpoena.

SEC. 3. There shall be paid out of the applicable accounts of the House of Representatives such sums as may be necessary to assist the Committee in conducting the inquiry under this resolution until a primary expense resolution providing for the expenses of the Committee on the Judiciary for the first session of the One Hundred Eleventh Congress is

adopted. Any of the amounts paid under the authority of this section may be used for the procurement of staff or consultant services.

SEC. 4. (a) For the purpose of the inquiry under this resolution, the Committee on the Judiciary is authorized to require by subpoena or otherwise—

(1) the attendance and testimony of any person (including at a taking of a deposition by counsel or consultant of the Committee); and

(2) the production of such things;

as it deems necessary to such inquiry.

(b) The Chairman of the Committee on the Judiciary, after consultation with the ranking minority member, may exercise the authority of the Committee under subsection (a).

(c) The Committee on the Judiciary may adopt a rule regulating the taking of depositions by a member, counsel, or consultant of the Committee, including pursuant to subpoena.

Attest:

Clerk.

111TH CONGRESS
1ST SESSION

Resolution

Establishing a task force of the Committee to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

IN THE COMMITTEE ON THE JUDICIARY

RESOLUTION

Establishing a task force of the Committee to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

Resolved,

SECTION 1. ESTABLISHMENT OF TASK FORCE.

There is hereby established in the House Committee on the Judiciary (hereinafter referred to as the "Committee") a task force (hereinafter referred to as the "Task Force") to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached.

SEC. 2. FUNCTIONS.

The Task Force shall conduct such hearings and investigations relating to the inquiry described in section 1 as the Chairman of the Committee, in consultation with

the Ranking Minority Member of the Committee, determines to be warranted.

SEC. 3. MEMBERSHIP.

The members of the Task Force shall be chosen from among the members of the Committee as follows:

(1) 7 members shall be chosen by the Chairman of the Committee.

(2) 5 members shall be chosen by the Ranking Minority Member of the Committee.

SEC. 4. CHAIRMAN; RANKING MINORITY MEMBER.

The Chairman of the Committee shall designate one member of the Task Force to be the Chair of the Task Force. The Ranking Minority Member of the Committee shall designate one member of the Task Force to be the Ranking Minority Member of the Task Force.

SEC. 5. AUTHORITY AND PROCEDURES.

(a) IN GENERAL.—Except as otherwise provided in this resolution, the Rules of the House of Representatives applicable to standing committees and the rules of the Committee shall govern the Task Force.

(b) DEPOSITION AUTHORITY.—

(1) CHAIRMAN MAY ORDER.—The Chairman of the Committee, upon consultation with the Ranking Minority Member of Committee, may order the taking of depositions, under oath and pursuant to no-

tice or subpoena. Consultation with the Ranking Minority Member shall include three business days written notice before any deposition is taken. All members of the Task Force shall also receive three business days written notice that a deposition has been scheduled.

(2) MODE FOR TAKING.—Notices for the taking of depositions shall specify the date, time, and place of examination. Depositions shall be taken under oath administered by a member of the Task Force or a person otherwise authorized to administer oaths. The individual administering the oath, if other than a member, shall certify that the witness was duly sworn. Witnesses may be accompanied at a deposition by counsel to advise them of their rights. No one may be present at depositions except members of the Task Force, Committee staff or consultants designated by the Chairman or Ranking Minority Member of the Committee, an official reporter, the witness, and the witness's counsel. Observers or counsel for other persons may not attend.

(3) CONDUCT OF DEPOSITION.—A deposition shall be conducted by a member of the Task Force or by Committee staff or consultants designated by the Chairman or Ranking Minority Member of the

Committee. Questions in the deposition shall be propounded in rounds, unless the Chairman and Ranking Minority Member of the Committee otherwise agree. A single round shall not exceed 60 minutes per side, unless the persons conducting the deposition agree to a different length of questioning. When depositions are conducted by staff or consultants, there shall be no more than two persons permitted to question a witness per round, one to be designated by the Chairman of the Committee and the other by the Ranking Minority Member of the Committee. Other Committee staff or consultants designated by the Chairman or Ranking Minority Member of the Committee may attend, but may not pose questions to the witness during that round. In each round, the person designated by the Chairman of the Committee shall ask questions first, and the person designated by the Ranking Minority Member shall ask questions second.

(4) OBJECTIONS.—The Chairman of the Committee may rule on any objections raised during a deposition, either during the deposition or after the deposition has been concluded. If a member of the Task Force appeals in writing the ruling of the Chairman, the appeal shall be preserved for Com-

mittee consideration. A witness that refuses to answer a question after being directed to answer by the Chairman may be subject to sanction, except that no sanctions may be imposed if the ruling of the Chairman is reversed on appeal.

(5) TRANSCRIPTION OF TESTIMONY.—Committee staff and designated consultants shall ensure that the testimony is either transcribed or electronically recorded or both. If a witness's testimony is transcribed, the witness or the witness's counsel shall be afforded an opportunity to review a copy. No later than five days thereafter, the witness may submit suggested changes to the Chairman of the Committee. Committee staff or designated consultants may make any typographical and technical changes requested by the witness. Substantive changes, modifications, clarifications, or amendments to the deposition transcript submitted by the witness must be accompanied by a letter signed by the witness requesting the changes and a statement of the witness's reasons for each proposed change. Any substantive changes, modifications, clarifications, or amendments shall be included as an appendix to the transcript conditioned upon the witness signing the transcript. The transcriber shall certify

that the transcript is a true record of the testimony, and the transcript shall be filed, together with any electronic recording, with the clerk of the Committee in Washington, DC. The Chairman and the Ranking Minority Member of the Committee shall be provided with a copy of the transcripts of the deposition at the same time. The Chairman and Ranking Minority Member shall consult regarding the release of depositions. If either objects in writing to a proposed release of a deposition or a portion thereof, the matter shall be promptly referred to the Committee for resolution.

(6) DEEMED PLACE OF TAKING.—Depositions shall be considered to have been taken in Washington, DC, as well as the location in which actually taken, once filed there with the clerk of the Committee for the Committee's use.

(7) REQUIREMENT TO PROVIDE COPY OF RESOLUTION TO WITNESS.— A witness shall not be required to testify unless the witness has been provided with a copy of this resolution and the resolution of the House of Representatives authorizing and directing the Committee to make the inquiry described in section 1.

SEC. 6. EXPIRATION.

The Task Force shall expire at the end of the 111th Congress.

SEC. 7. EFFECTIVE DATE.

This resolution shall take effect on January 22, 2009.

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111TH CONGRESS
1ST SESSION

Resolution

Expanding the responsibilities of the task force established to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached, to also include conducting an inquiry into whether United States District Judge Samuel B. Kent should be impeached.

IN THE COMMITTEE ON THE JUDICIARY

RESOLUTION

Expanding the responsibilities of the task force established to conduct an inquiry into whether United States District Judge G. Thomas Porteous should be impeached, to also include conducting an inquiry into whether United States District Judge Samuel B. Kent should be impeached.

Resolved, That the resolution adopted in the Committee January 22, 2009, establishing the task force to conduct an inquiry regarding the impeachment of Judge Porteous, is amended as follows:

(1) Section 1 is amended to read as follows:

"SECTION 1. ESTABLISHMENT OF TASK FORCE.

"There is hereby established in the House Committee on the Judiciary (hereinafter referred to as the 'Com-

mittee') a task force (hereby referred to as the 'Task Force') to conduct—

"(1) an inquiry into whether United States District Judge G. Thomas Porteous should be impeached; and

"(2) an inquiry into whether United States District Judge Samuel B. Kent should be impeached.".

(2) Section 5(a) is amended to read as follows:

"(a) IN GENERAL.—Except as otherwise provided in this resolution, the Rules of the House of Representatives applicable to the Committee on the Judiciary, the rules of the Committee, and the authorities provided in House Resolution 15 and House Resolution 424, shall govern the inquiries conducted by the Task Force.".

SC EXHIBIT - 00034

U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

May 18, 2007

The Honorable Edith H. Jones
Chief Judge
United States Court of Appeals for the Fifth Circuit
515 Rusk Avenue, Room 12505
Houston, Texas 77002-2655

Re: Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr.

Your Honor:

The United States Department of Justice respectfully submits this complaint referring allegations of judicial misconduct concerning the Honorable G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana, pursuant to 28 U.S.C. §§ 351-64 and the Rules Governing Complaints of Judicial Misconduct or Disability (amended July 15, 2003).[1]

For the past several years, the Federal Bureau of Investigation ("FBI") and a grand jury empanelled in the Eastern District of Louisiana investigated whether Judge Porteous and other individuals bribed or conspired to bribe a public official in violation of 18 U.S.C. §§ 201 and 371, committed or conspired to commit honest services mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submitted false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filed false declarations, concealed assets, and acted in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401.

The Department has determined that it will not seek criminal charges against Judge Porteous. Although the investigation developed evidence that might warrant charging Judge Porteous with violations of criminal law relating to judicial corruption, many of those incidents took place in the 1990s and would be precluded by the relevant statutes of limitations. In reaching its decision not to bring other available charges that are not time barred, the Department weighed the government's heavy burden of proof in a criminal trial, and the obligation to carry that burden to a unanimous jury; concerns about the materiality of some of Judge Porteous's provably false statements; the special difficulties of proving mens rea and intent to deceive beyond a reasonable doubt in a case of this nature; and the need to provide consistency in charging decisions concerning bankruptcy and criminal contempt matters. The Department also

[1] This complaint contains information obtained by the grand jury. The district court has authorized disclosure of matters occurring before the grand jury pursuant to Fed. R. Crim. P. 6(e)(3)(E)(I) solely for use in this complaint and any resulting judicial proceedings.

HP Exhibit 4

gave careful consideration -- as it must -- to the availability of alternative remedies for Judge Porteous's history of misconduct while on the bench, including impeachment and judicial sanctions administered pursuant to 28 U.S.C. §§ 351-64.

Despite the Department's decision not to charge Judge Porteous with violations of federal criminal law, the investigation has uncovered evidence of pervasive misconduct committed by Judge Porteous. The Department also is aware that Judge Porteous and his medical examiners have concluded that he is mentally and psychologically unfit to serve as a federal judge, and that his incompetency is permanent. Collectively, the evidence indicates that Judge Porteous may have violated federal and state criminal laws, controlling canons of judicial conduct, rules of professional responsibility, and conducted himself in a manner antithetical to the constitutional standard of good behavior required of all federal judges. Further, it has come to the Department's attention that Judge Porteous is scheduled to return to the federal bench in June 2007, at which time he may seek to preside over matters involving the Department. The Department accordingly refers this evidence to Your Honor for possible disciplinary proceedings and, if warranted, certification of the allegations to Congress for impeachment.

BACKGROUND

On October 11, 1994, G. Thomas Porteous, Jr., was confirmed by the United States Senate as a United States District Court Judge for the Eastern District of Louisiana. Before his elevation to the federal bench, he served as a judge on the 24th Judicial District Court of the State of Louisiana ("24th JDC") for ten years, from 1984 to 1994.

The New Orleans Division of the FBI conducted an investigation into allegations of judicial corruption in the 24th JDC. That investigation resulted in the convictions of fourteen defendants, including several 24th JDC judges, the owners of a bail bonding business, and other state court litigants and officials. During the investigation, the FBI was informed that Judge Porteous had in the past accepted, and as a federal judge continued to accept things of value, including payments and trips, from local attorneys, allegedly in exchange for favorable rulings. The FBI also was informed that Judge Porteous maintained an improper relationship with Louis and Lori Marcotte, the owners of a bail bonding business, who allegedly provided Judge Porteous as well as other state judges and employees various things of value in exchange for access and assistance on bond-related matters.

In March 2001, Judge Porteous and his wife, Carmella Porteous, filed for bankruptcy under Chapter 13. Gabriel and Carmella Porteous signed and filed a declaration that their bankruptcy schedules and statement of financial affairs were true to the best of their knowledge, information, and belief. Subsequently, the bankruptcy court confirmed a repayment plan based on the information the Porteouses submitted to the court. The bankruptcy judge issued an order providing for repayment to the creditors over a 36-month period and prohibiting the Porteouses from accruing further debt during the bankruptcy. The repayment plan was satisfied and the bankruptcy discharged in July 2004.

EVIDENCE OF MISCONDUCT

I. Evidence that Judge Porteous Violated the Order of the Bankruptcy Court

Judge Porteous and his wife Carmella Porteous filed for bankruptcy on March 28, 2001. The Porteouses' financial records show that they sought protection in bankruptcy in large part because of their substantial gambling activities. For example, between June 1995 and July 2000, while Judge Porteous served on the federal bench, over $66,000 in gaming charges appear on Judge Porteous's credit card statements. Along with those credit card charges, between January 1996 and May 2000 Judge Porteous wrote checks or made cash withdrawals at casinos for an additional $27,739.

Judge William Greendyke, sitting by designation on the Bankruptcy Court for the Eastern District of Louisiana, issued an Order confirming the bankruptcy repayment plan on June 28, 2001. Among other things, Judge Greendyke ordered that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee. Failure to obtain such approval may cause the claim for such debt to be unallowable and non-dischargeable."

Judge Porteous violated this order on multiple occasions. Among other debts, he obtained gambling markers and loans from casinos during the pendency of the bankruptcy proceeding.[2] Judge Porteous obtained the following short-term debts from casinos in the aggregate amount of $31,900 in violation of the court's order:

- on August 20 and 21, 2001, Porteous borrowed $8,000 from Treasure Chest Casino in Kenner, Louisiana;
- on September 28, 2001, Porteous borrowed $2,000 from Harrah's Casino in New Orleans, Louisiana;
- on October 13, 2001, Porteous borrowed $1,000 from Treasure Chest Casino in Kenner, Louisiana;
- on October 17 and 18, 2001, Porteous borrowed $5,900 from Treasure Chest Casino in Kenner, Louisiana;
- on October 31, 2001, Porteous borrowed $3,000 from Beau Rivage Casino in Biloxi, Mississippi;
- on November 27, 2001, Porteous borrowed $2,000 from Treasure Chest Casino in Kenner, Louisiana;

[2] A "marker" is a form of credit extended by a casino that enables a customer to borrow money while authorizing the casino to draw any unpaid balance after a fixed period of time from the customer's bank account. Typically, markers are deposited after a few days, but Judge Porteous obtained an agreement from at least one casino that he would be afforded thirty days to repay his markers before the casino would deposit them.

- on December 11, 2001, Porteous borrowed $2,000 from Treasure Chest Casino in Kenner, Louisiana;
- on December 20, 2001, Porteous borrowed $1,000 from Harrah's Casino in New Orleans, Louisiana;
- on February 12, 2002, Porteous borrowed $1,000 from Grand Casino in Gulfport, Mississippi;
- on April 1, 2002, Porteous borrowed $2,500 from Treasure Chest Casino in Kenner, Louisiana;
- on May 26, 2002, Porteous borrowed $1,000 from Grand Casino, Gulfport, Mississippi; and
- on July 4 and 5, 2002, Porteous borrowed $2,500 from Grand Casino, Gulfport, Mississippi.

In addition, the evidence shows that Judge Porteous violated the order prohibiting new debt on several other occasions. On July 4, 2002, Judge Porteous applied successfully to increase his credit limit at Grand Casino Gulfport from $2,000 to $2,500. Judge Porteous and his wife accrued new debt on a credit card in violation of the order, including $734.31 in new charges between May 16 and June 18, 2001; $277.74 in new charges between June 15 and July 18, 2001; and $321.32 between July 16 and August 17, 2001.[3] Further, Judge Porteous and his wife obtained new, low-limited credit cards during the course of the bankruptcy without obtaining trustee approval, also in violation of the order. On several occasions, Judge Porteous signed the checks paying off the debts on credit cards that were obtained in his wife's name.

The evidence indicates that Judge Porteous intended to violate the order of the bankruptcy court. First, Judge Porteous is a federal judge who issues similar orders, and unquestionably expects that they will be obeyed. Claude C. Lightfoot, his bankruptcy attorney, testified that both he and the bankruptcy judge told Judge Porteous that he could not obtain new debt, that the requirement was well known to Judge Porteous, and that it was very clear to Judge Porteous that he would need approval to obtain new debt.[4] During a May 9, 2001 creditors meeting, Judge Porteous was further admonished by the trustee that he could not obtain new debt. The trustee also provided Judge Porteous with a written statement that reiterated the restriction on obtaining debt during bankruptcy, including credit card debt. Finally, Judge Porteous's actions in the bankruptcy show that he knew about the order's prohibition, and violated it willfully: not only

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[3] The Porteouses retained this credit card during the bankruptcy by failing to report on the bankruptcy application that they had paid off the debt on that card immediately before filing, as set forth below.

[4] The district court overseeing this grand jury investigation ruled that the attorney-client and work product privileges did not bar Lightfoot from testifying or producing records about his representation of Judge Porteous, both because the privilege did not apply to much of the requested information and also because the government satisfied its burden of showing that the crime-fraud exception defeated the claim of privilege.

did several of the violations occur soon after the confirmation order was issued, but he complied with the no-debt provision of the order in other instances that he knew were likely to come to the attention of the trustee. Specifically, the Porteouses requested permission from the bankruptcy trustee to refinance their home, which the trustee granted on December 20, 2002, and to obtain two new car leases, which the trustee granted on January 2, 2003. That Judge Porteous knew to request permission for other debts during the pendency of the bankruptcy makes clear that his failure to request permission for gambling and credit card debts was intentional and willful.

II. Evidence that Judge Porteous Filed False Pleadings and Concealed Assets in Bankruptcy

Judge Porteous included numerous false statements in bankruptcy pleadings signed under penalty of perjury and submitted to the court -- statements that closed avenues of inquiry and undermined the administration of the bankruptcy by, among other things, concealing assets and income that potentially could have been made available to creditors, but were not.

A. False Initial Petition

The evidence indicates that Judge Porteous intentionally filed his initial bankruptcy petition using a false name to protect himself from public embarrassment. The docket and various documents from the bankruptcy of Gabriel Thomas Porteous, Jr., and Carmella Porteous, case number 01-12363 in the Eastern District of Louisiana, indicate that a petition was filed on March 28, 2001, listing the debtors as "G.T. Ortous" and "C.A. Ortous" and their "street address" as "P.O. Box 1723, Harvey, LA 70059-1723." The social security numbers listed correspond to Gabriel Thomas Porteous, Jr., and Carmella Porteous. The petition was signed by Gabriel and Carmella Porteous in two places, once each directly over the printed name "Ortous." Those signatures were made under penalty of perjury.

Bankruptcy records also indicate that an amended petition was filed in the same case number on April 9, 2001, providing the debtors' names "Gabriel T. Porteous, Jr.," and "Carmella A. Porteous" and the street address "4801 Neyrey Dr., Metairie, LA 70002." United States Postal Service records include a PS Form 1093 Post Office Box assignment for P.O. Box 1723 in Harvey, Louisiana, which indicates that Gabriel T. Porteous, Jr., rented that box on March 20, 2001, just days before filing for bankruptcy.

The Porteouses' bankruptcy attorney testified that he and Judge Porteous specifically devised this scheme to sign under penalty of perjury an initial petition using a fabricated name and newly-acquired post office box address. The attorney testified that their purpose in falsifying the initial filing was to avoid publicity and humiliation by preventing Porteous's name from being listed in the local newspaper among other bankruptcies filed that week.

B. Concealed Assets and Income

The investigation also obtained evidence that Judge Porteous concealed assets and income during his bankruptcy proceeding. The Chapter 13 Schedules and Plan were signed by Gabriel and Carmella Porteous and Claude Lightfoot and were filed on April 9, 2001. The Porteouses signed a declaration filed with the Schedules indicating that, under penalty of perjury,

the Schedules were true to the best of their knowledge, information, and belief. Judge Porteous also stated under oath in a hearing before the bankruptcy trustee on May 9, 2001, that the materials submitted were true to the best of his knowledge. However, the bankruptcy schedules and other Porteous financial records indicate that the Porteouses concealed from the bankruptcy court several assets and sources of income, including those described below.

1. Concealed Tax Refund – In response to question 17 of Schedule B, filed April 9, 2001, which asks for "other liquidated debts owing debtor including tax refunds," Judge Porteous stated that there were "None." For question 20 of Schedule B, which asks for "other contingent and unliquidated claims of every nature, including tax refunds," Judge Porteous likewise responded, "None." However, records provided by Bank One for accounts of Gabriel and Carmella Porteous indicated that a $4,143.72 tax refund was deposited approximately one week later, on April 13, 2001. In an interview, the bankruptcy trustee indicated that the Porteouses did not notify him about their calendar year 2000 tax refund and did not turn the refund over to him even though they were required to do so. Their attorney, Claude Lightfoot, testified that the Porteouses never told him they were expecting a refund for calendar year 2000 when he went over each line of their schedules with them before signing and filing them.

2. Understated Bank Account Balance – In response to question 2 of Schedule B, which asks for "checking, savings, or other financial accounts, . . . or shares in banks, savings and loan, thrift, building and loan, and homestead associations," the Porteouses listed "Bank One Checking Account No. 002379554" with a current value of $100. However, the Porteouses' Bank One statement for that account, covering the period March 23 to April 23, 2001, indicates that the balance in that account on March 28, 2001, the date the bankruptcy petition was filed, was more than $1,800. The balance on April 9, 2001, the date the schedules were filed, was more than $3,000. Another bank account, which had a balance of more than $280 at the time, was not included in the bankruptcy filings at all. Judge Porteous's bankruptcy attorney testified that the only account Judge Porteous told him about was the account listed in the schedules, and that the $100 figure for that account came from Judge Porteous. By providing counsel with false and incomplete information, Porteous prevented his lawyer from rendering considered advice on what amounts to include, and by failing to disclose the full amount of assets in his bank account, Judge Porteous obstructed the trustee's task of accurately providing a full accounting of the Porteouses' financial condition to the bankruptcy court and interested creditors.

3. Carmella Porteous's Employment – Schedule I requires debtors to list, among other items, current income, occupation, and name of employer for the individual debtors. On Schedule I, the Porteouses listed the employer and take-home pay for Judge Porteous, but provided no employer name or income for Carmella Porteous. However, the Porteouses' bank records indicate that Carmella Porteous worked sporadically for several established employers both before and after the bankruptcy petition was filed. For instance, in the year 2000, she earned at least $864 from Adecco Employment Services and $327 from New Orleans Metropolitan Convention and Visitors, and in 2001, she earned $3,109.50 from R&M Glynn, Inc., and $915 from New Orleans Metropolitan Convention and Visitors. None of this income was indicated on the bankruptcy petition or schedules, nor was it subsequently brought to the attention of the trustee or the court.

C. Concealed Preferred Creditors

The bankruptcy schedules and other Porteous financial records also indicate that the Porteouses apparently concealed from the bankruptcy trustee and creditors the existence of several additional creditors who were paid in full immediately before the bankruptcy was filed.

Gabriel and Carmella Porteous signed under penalty of perjury their Statement of Financial Affairs on April 9, 2001. Question 3 of the Statement stated, "List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than $600 to any creditor, made within 90 days immediately preceding the commencement of this case." The Porteouses answered, "Normal installments." That statement was false, as they failed to list full repayments made to Fleet Credit Card Services and Grand Casino Gulfport shortly before they declared bankruptcy. These creditors therefore appear to be secretly preferred creditors, preferences that allowed the Porteouses to retain a credit card and protect their line of credit with a casino during the pendency of their bankruptcy repayment plan.

1. Fleet Credit Card – Credit card records of Carmella Porteous from Fleet Credit Card Services obtained pursuant to a grand jury subpoena indicate that Carmella Porteous held Fleet credit card account # 5447195123210658 prior to the filing of the Porteouses' bankruptcy on March 28, 2001. The records further indicate that the balance on that account, $1,088.41, was paid in full with a March 23, 2001 check from Judge Porteous's secretary, Rhonda Danos. His secretary testified that she made that payment at Judge Porteous's direction. Accordingly, Fleet Credit Card Services was fully paid off, in contrast to the creditors included in the bankruptcy, and the Porteouses retained the Fleet credit card for their own use, all without any disclosure to the bankruptcy trustee, judge, or creditors. Indeed, the Porteouses subsequently used this credit card in violation of the bankruptcy court's order prohibiting them from accruing new debt.

2. Grand Casino Markers – Records obtained from Grand Casino Gulfport pursuant to a grand jury subpoena indicated that Gabriel Porteous obtained two $1,000 markers from the casino on February 27, 2001. According to casino and bank records and interviews, Grand Casino Gulfport attempted to deposit the markers, which Judge Porteous had not repaid, in March 2001, but was unsuccessful due to a change in the ownership of Judge Porteous's bank. Casino records further show that Porteous contacted the casino and provided the new bank information before filing his Statement of Financial Affairs. On April 4, 2001, the markers were successfully deposited. Grand Casino Gulfport was therefore fully paid off, in contrast to the creditors included in the bankruptcy, all without any notification to the bankruptcy trustee, judge, or creditors. In addition, as noted above, Judge Porteous subsequently raised his credit limit with Grand Casino Gulfport during the pendency of his bankruptcy.

D. Undisclosed Gambling Losses

On the Statement of Financial Affairs, Question 8 states, "List all losses from fire, theft other casualty or gambling within one year immediately preceding the commencement of this case or since the commencement of this case." The Porteouses checked the box for "None." However, analyses of casino records indicated that Judge Porteous's gambling losses exceeded $12,700 during the preceding year, or at least $5,700 in net losses. According to the trustee, had

he known about the Porteouses' gambling losses he may have scrutinized more carefully the income and expense figures reported by the Porteouses in their filings.

E. Impact of False Statements and Concealed Assets in Bankruptcy

Judge Porteous, in the series of false statements set out above, subverted the bankruptcy court's ability to properly administer his bankruptcy. His use of a false name and his concealment of his gambling losses in the year preceding his bankruptcy prevented the public from learning about the nature of his public bankruptcy and prevented the trustee, court, and creditors from learning a relevant aspect of his financial condition. His false statements about expected tax refunds, bank accounts, his wife's income, and the existence of preferred creditors all concealed from the court income or assets that could have been distributed to creditors in the bankruptcy or been used to calculate the Porteouses' obligations in the event their assets were to be liquidated. The Porteouses filed a Chapter 13 bankruptcy, in which payments to creditors are based on prospective income. Carmella Porteous's income would have been directly relevant to the calculation of income available to repay creditors. Moreover, in order to determine a fair recovery for creditors under Chapter 13, courts compare the amount that a debtor would pay under Chapter 13 with the amount they would pay were the debtor's assets liquidated. The creditors must fare at least as well in Chapter 13 as they would if the assets were liquidated under Chapter 7. Accordingly, depending on how they were treated by the trustee and bankruptcy judge, concealed assets such as the Porteouses' expected tax refund, money in bank accounts, and money paid to preferred creditors (which the court could order repaid and distributed among all creditors) could have affected the comparative liquidation value of his estate, the amount of the monthly payments the Porteouses were required to make, or the percentage of debt the Porteouses were ultimately obligated to repay.

Even if the value of the hidden assets would not ultimately have affected the amount recovered by any individual creditors, Judge Porteous's false statements nonetheless undermined the bankruptcy process generally. "Debtors have an absolute duty to report whatever interests they hold in property, even if they believe their assets are worthless or are unavailable to the bankruptcy estate." In re Yonikus, 974 F.2d 901, 904 (7th Cir. 1992). This is because allowing debtors "the discretion to not report exempt or worthless property usurps the role of the trustee, creditors, and the court by denying them the opportunity to review the factual and legal basis of debtors' claims." In re Bailey, 147 B.R. 157, 163 (Bankr. N.D. Ill. 1992). Judge Porteous's concealment of assets and his filing of a false petition, schedules, and his statement of financial affairs precluded other interested parties from asserting their rights and enjoying a full and fair hearing on any claims they may have made against the estate.[5]

[5] Despite the evidence recited above, the Department ultimately concluded that it would not seek to charge Judge Porteous with violations of federal criminal law under 18 U.S.C. § 152(1) and (3) (concealed assets and false statements in bankruptcy) and 18 U.S.C. § 401(3) (criminal contempt of court). Several factors informed that decision, including the burdens of proving beyond a reasonable doubt to a unanimous jury the materiality of Judge Porteous's misconduct in the bankruptcy proceeding. The burdens on the government in a criminal prosecution, however, do not apply in judicial misconduct or impeachment proceedings. An

III. Evidence that Judge Porteous Submitted Additional False and Misleading Statements

The investigation obtained evidence that numerous signed documents filed prior to or contemporaneously with the initiation of bankruptcy on which Judge Porteous had a duty to be truthful – including government financial disclosure reports, a casino credit application, and a bank loan renewal application -- also contained false or misleading information.

Porteous's financial disclosure report for calendar year 2000, filed with the Administrative Office in May 2001 just over a month after he filed for bankruptcy, failed to list numerous credit accounts he was obligated to disclose, including most of those listed on his bankruptcy documents. Further, on that disclosure report Judge Porteous indicated liabilities of $15,000 or less on each of two credit cards, while Schedule F to his bankruptcy filings from the same time period reflects that Judge Porteous in fact owed approximately $196,000 in unsecured debt, most of it credit card debt. Judge Porteous also failed to disclose on his annual financial disclosure forms the travel, cash, and gifts he received while a federal judge from attorneys and others with matters before him, as discussed further below. In addition, Judge Porteous reported "0" indebtedness on an April 30, 2001, credit application filed with Harrah's casino just weeks after he noted in his petition to the bankruptcy court that he had incurred $196,000 in unsecured debt.

The investigation also uncovered evidence that Judge Porteous intended to mislead Region's Bank about his financial condition in order to ensure that a $5,000 single-payment loan scheduled to become due shortly before the bankruptcy would be extended and, thus, discharged among other unsecured debts in the bankruptcy. In response to a grand jury subpoena, Claude Lightfoot, the Porteouses' bankruptcy attorney, produced a letter from him to the Porteouses dated December 21, 2000, which discussed additional letters he had sent to all but one of the unsecured creditors that later were included in the bankruptcy. Lightfoot stated, "I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank which we wanted to exclude, proposing the workout of the debts to each . . . ." (emphasis added). These "workout" letters proposed a 21% payment of the debts the Porteouses owed to each of 13 unsecured creditors "[i]n an effort to provide all of my clients' unsecured creditors with immediate payment now and to avoid the necessity of a Chapter 7 bankruptcy filing." (emphasis added). Region's Bank, to whom the Porteouses owed $5,000 on an unsecured "single payment" loan scheduled to come due January 13, 2001, was not sent a workout letter, nor was the $5,000 Regions loan amount included in the schedule of debts provided in the workout letters to other creditors. Another document Lightfoot produced was a list of the Porteouses' creditors and debts that had been prepared by Judge Porteous and his wife, and which Lightfoot used, along with other worksheets, during his efforts to reduce the Porteouses' debts short of bankruptcy as well as in preparing the bankruptcy petition and schedules. That list includes an entry in what has been identified as Judge Porteous's handwriting that states, "Regions Bank $5000 unsecured loan due 1/13/01."

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impeachable offense is any misconduct that damages the State and the operations of governmental institutions; it is not limited to criminal misconduct.

On January 16, 2001 -- shortly after the workout letters were sent to the unsecured creditors -- Judge Porteous signed an application with Region's Bank to renew his loan and extend the date of repayment on the loan six months. On the application Judge Porteous certified that he was not "in the process of filing bankruptcy" and signed under the acknowledgment that there had been "no material adverse change" in his financial condition "as disclosed in my most recent financial statement to lender." (The relevant loan applications with Region's Bank submitted in January and July 2000 included financial statements, but neither of those statements appears to have been completed.) The loan renewal was approved, and the repayment date was extended to July 17, 2001. The Porteouses then filed their initial voluntary petition for bankruptcy approximately two months later, on March 28, 2001, and the loan from Region's Bank was discharged in the bankruptcy.

The December 21, 2000, letter from their attorney to the Porteouses establishes that Judge Porteous's decision not to disclose his actual financial condition and impending bankruptcy to Region's Bank in the loan renewal application was intentional. Indeed, the letter states that the Porteouses and their attorney decided not to send the workout letter to Region's Bank in particular. As a result, Judge Porteous was able to obtain an extension under the false pretense that his financial condition had not materially worsened and that he was not on the brink of bankruptcy, and was able to include the Region's Bank loan in the bankruptcy even though it was originally set to mature before he filed.

IV. Evidence that Judge Porteous Solicited and Accepted Things of Value from Attorneys and Litigants with Matters Before Him

Among the attorneys identified by FBI sources as the group most closely linked to the corruption allegations surrounding Judge Porteous were Donald Gardner, Robert Creely, Leonard Levenson, and Warren Forstall. Each of those attorneys was interviewed or compelled to testify before the grand jury about their financial dealings with the Judge. The evidence obtained from those witnesses shows that Judge Porteous accepted cash, expensive meals, travel, and other benefits from them, gifts that the Judge failed to disclose to the Administrative Office on his annual financial disclosure reports or to litigants and opposing counsel in cases in which those attorneys were engaged. The Department also has obtained evidence that Judge Porteous received unreimbursed travel and sport hunting trips from litigants with matters before him in federal court, also without disclosing his apparent conflicts to interested parties and counsel.

A. Cash Payments from Attorneys

Robert Creely and Jacob Amato, who represented clients with matters before Judge Porteous in state and federal court, testified that Judge Porteous solicited and accepted cash payments from them while he was a state and federal judge. According to their testimony, none of the payments occurred after 1999.

Robert Creely is a lawyer in New Orleans, Louisiana. He met Judge Porteous in high school, and practiced at the same firm as Judge Porteous for a year after law school. Creely then left the firm with another local attorney, Jacob Amato. Creely and Amato practiced together in

the law firm of Creely & Amato for 29 years. Creely describes himself as a very close personal friend of Judge Porteous, as does Amato.

Creely testified that, beginning in the late 1980s and early 1990s, while Judge Porteous was a state court judge, he began to solicit cash payments from Creely. Creely and Amato had matters before Judge Porteous in state court at that time. Creely testified that he and Amato would each take draws for half the amount from their joint law firm account. Creely would give that money to Judge Porteous in cash. Creely indicated that Judge Porteous would always ask for the money to pay urgent, unforeseen expenses related to his family. However, Creely stated that Judge Porteous drank and gambled excessively, and Creely was concerned he was paying for the Judge's extravagant lifestyle. Creely testified that, as a result, he eventually told Judge Porteous he could not continue to give him money.

After Creely decided to cut off further payments to Judge Porteous, the Judge began to designate Creely as the curator on executory interests in mortgaged property in actions over which he presided as a state court judge. Creely testified that he received approximately $175 from the state court system for each curatorship, and that those cases required very little time or effort on his part. In return, Judge Porteous asked Creely for the money he was paid by the court. Creely testified that he paid Judge Porteous in cash the amount he received, minus his minimal costs, which usually involved simply sending a letter and posting public notice of the pending executory actions. Although PACER records indicate Judge Porteous appointed Creely as the representative for an absent party in at least one forfeiture action in federal court -- that is, United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995) -- Creely testified that the kick-back scheme he described came to an end when Judge Porteous moved from state to federal court in 1994. Jacob Amato also testified about the curatorships and stated that he was aware that Judge Porteous asked Creely for money and explicitly tied those payments to the many cases in which the Judge appointed Creely as a curator.

Creely testified that, in May 1999, Judge Porteous once more asked his law partner, Jacob Amato, for a payment of $2,000, this time to help defray the cost of a wedding for one of his children. This request was made while Amato was counsel on the Liljeberg matter, a multi-million dollar civil action pending before Judge Porteous in federal court, described further below. Jacob Amato also testified about that request for money from Judge Porteous. Amato gave Porteous the money he asked for in cash, again splitting the payment with Creely through personal draw-downs from their law firm account. Creely testified that Judge Porteous has not solicited, and he has not given him, any additional cash since the May 1999 payment of $2,000. Creely testified that Judge Porteous instructed him to give the cash to his secretary, Rhonda Danos, who would pick it up from his office. Creely says he put the money in a sealed envelope and gave it to Danos. Danos testified that she does not recall receiving an envelop with cash in it, although she stated that she did pick up items from time to time for the Judge from Creely's office.

Jacob Amato corroborated Creely's claims that they made cash payments to Judge Porteous both while he was a state and a federal judge. Between them, Creely and Amato represented parties in four actions over which Judge Porteous presided on the federal bench

according to the PACER electronic court records system.[6] Creely testified that in total they may have given Judge Porteous as much as $10,000 over time.

Donald Gardner is also an attorney in New Orleans, Louisiana and a close personal friend of Judge Porteous. Although Gardner testified he does not gamble often, he stated that on occasions when he was at casinos with Judge Porteous, the Judge would ask for money to gamble, and he would give it to him. Gardner testified Judge Porteous would request amounts in the range of $100 to $200. He also testified that he provided Judge Porteous approximately $200 to purchase a gift for his wife. Gardner also paid $300 to a contractor on behalf of Judge Porteous. Gardner testified that his payments to or on behalf of Judge Porteous occurred prior to him taking the federal bench. According to Gardner, he estimated that over the course of their friendship he did not give Judge Porteous more than $3,000 in total. Although the FBI developed sources who believed that Gardner regularly paid Judge Porteous, the investigation was ultimately unable to disprove his testimony about the extent of his cash payments to Judge Porteous.

In addition to cash payments to Judge Porteous, several attorneys testified that they gave money to his secretary, Rhonda Danos, to help support Judge Porteous's son during his externship in Washington, D.C., while Judge Porteous was a federal judge. Leonard Levenson is another local attorney who has been friends with Judge Porteous since the early 1980s. Levenson testified that, although he never gave cash directly to Judge Porteous, he may have contributed a few hundred dollars to Rhonda Danos to be used for Judge Porteous's son's externship. Don Gardner also testified that he gave a couple hundred dollars for the externship.[7]

B. Travel, Meals, and Hunting and Fishing Trips from Lawyers and Litigants

The investigation of the FBI into alleged judicial corruption also led to the discovery of evidence that, on a regular basis, Judge Porteous accepted gifts of travel, expensive meals, drinks, and hunting and fishing trips from attorneys and businesses with matters before him both in state and federal court, and that Judge Porteous failed to disclose his receipt of those benefits to interested counsel and litigants and, for all but two hunting trips, in his financial disclosure reports to the Administrative Office.

Several attorneys who were compelled to testify admitted that they paid for travel for Judge Porteous. In May 1999, Judge Porteous and several others traveled to Las Vegas, Nevada for his son's bachelor party. Credit card records and Caesar's Hotel records indicate that Robert

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[6] See In re. Liljeberg Enters. Inc., Civ. No. 93-01794 (filed June 01, 1993); United States v. Ratcliff, Civ. No. 95-00224 (filed Jan. 19, 1995); Buck v. Candy Fleet Corp., Civ. No. 97-01593 (filed May 16, 1997); and Union Planters Bank, N.A. v. Gavel, Civ. No. 02-01224 (filed Apr. 24, 2002).

[7] Gardner also testified that he, like Creely, was designated by Judge Porteous as a curator in numerous state cases then pending before the Judge. He claimed, however, that the Judge never asked for money in connection with those appointments.

Creely paid $421.90 with his credit card for Porteous's room from May 20 to May 23, 1999. Judge Porteous's credit card records indicate that he took out more than $5,000 on his credit cards at Caesar's Hotel during the trip. Caesar's Hotel records estimate that Judge Porteous lost $1,200 gambling over the course of his stay. Judge Porteous's bank records indicate that he deposited $5,000 into his money market account days after he returned from the trip. The source of that money is unknown. Don Gardner, the New Orleans attorney representing the opposing party in the Lilieberg cases that were then pending before Judge Porteous, also attended the May 1999 Las Vegas bachelor party trip.

In grand jury testimony and an interview with the FBI, Robert Creely admitted that he attended the bachelor party trip, but did not recall paying for Judge Porteous's room. He said that he and two other non lawyers present on the trip also split the bill for an expensive steak dinner for many of the people in attendance, including Judge Porteous. He claimed that he did not give Judge Porteous any money during or immediately following that trip.

Robert Creely also testified that he has taken Judge Porteous on many fishing trips over the years, including while Judge Porteous was a federal judge, and on two or perhaps three hunting trips while Porteous was on the state bench. Creely valued the hunting trips at the time at around $1,500 per person plus airfare, all of which he covered on Judge Porteous's behalf. Judge Porteous never covered any of the costs related to the hunting or fishing trips.

Warren Forstall, Jr. is a lawyer who practices in New Orleans, Louisiana. He and Judge Porteous have been friends for about 20 years. Forstall testified that in September 1999, at Judge Porteous's invitation, Forstall purchased tickets for both of them to San Francisco to attend an attorney conference together. They later cancelled the trip, and Forstall did not know what became of the ticket he purchased for Judge Porteous. Credit card and travel agency records for Forstall show that he paid $238 with his credit card for the airline tickets for Judge Porteous to San Francisco on September 18, 1999, with a return flight from Reno-Tahoe to New Orleans on September 22, 1999, along with an accompanying ticket for himself. Travel records indicate that Judge Porteous traded his California plane ticket for a ticket to Las Vegas in October 1999. Judge Porteous failed to disclose his acceptance of an airline ticket from Forstall on his financial disclosure forms or in any litigation in which Forstall had an interest.[8]

In an interview with the FBI, Leonard Levenson stated that he has paid for hunting trips with Judge Porteous both while the Judge was on the state and federal bench. In October 1999, Levenson and his wife accompanied Judge Porteous to Las Vegas, Nevada. Porteous obtained his airfare for that trip by trading in the unused ticket to San Francisco that he previously had obtained from Warren Forstall. Judge Porteous's secretary, Rhonda Danos, paid for the

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[8] The Court's PACER records indicate that Forstall's firm represented parties in at least six federal actions before Judge Porteous. See Everage v. Fisher, Civ. No. 98-00451 (filed Feb. 11, 1998); McAfee v. Ayers, Civ. No. 98-01415 (filed May 12, 1998); Ford v. United States Postal Serv., Civ. No. 98-02170 (filed July 24, 1998); Wingate v. Brock, Civ. No. 98-03290 (filed Nov. 6, 1998); Coleman v. United States Postal Serv., Civ. No. 99-02017 (filed June 30, 1999); and Minnifield v. Drug Trans. Inc, Civ. No. 02-02516 (filed Aug. 13, 2002).

Levensons' airfare, and was reimbursed by them in November 1999. Levenson has been counsel in at least eleven matters over which Porteous presided in federal court.[9] It does not appear that Judge Porteous provided notice to any party of his acceptance of gifts and benefits from Levenson.

According to evidence obtained from attorneys who were interviewed or testified before the grand jury, Judge Porteous also made it his regular practice to receive gifts of meals and drinks at expensive restaurants from lawyers with matters before him while he was a judge in both state and federal court. Robert Creely, Jacob Amato, Leonard Levenson, Donald Gardner, and Warren Forstall all admitted that they frequently bought meals for Judge Porteous that he did not reimburse. Creely testified that Judge Porteous always expected that the lawyers would pick up the tab, and that the Judge would never offer to pay. Ronald Bodenheimer, a former 24th JDC judge who agreed to be interviewed and testify after pleading guilty to honest services fraud in connection with the investigation of judicial corruption in the 24th JDC, stated that when he was elected to the state bench, Judge Porteous told him that since he was a judge he would never again need to pay for his own lunch. Each of the attorneys who routinely bought meals for Judge Porteous had matters before him both in state and federal court. Judge Porteous apparently never disclosed to any litigant or counsel his receipt of benefits from these lawyers, nor did he disclose any meals valued over $100 in any financial disclosure report filed with the Administrative Office.[10]

The FBI and other investigative agencies also have obtained evidence that, on at least three occasions, Judge Porteous accepted free travel and hunting trips from the Rowan Company and Diamond Offshore. Rowan and Diamond are each frequently named as defendants in maritime actions brought in the Eastern District of Louisiana and, on many occasions, in actions assigned to Judge Porteous. The hunting trips included free air transportation by private plane from New Orleans, Louisiana to Falfurrias, Texas, and sport hunting on property owned or

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[9] See In re. Liljeberg Enters, Inc., Civ. No. 93-01794 (filed June 01, 1993); In re. Owen McManus, Civ. No. 95-01615 (filed May 23, 1995); Alliance General Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961 (filed Mar. 15, 1996); First Natl Bank v. Evans, Civ. No. 96-01006 (filed Mar. 20, 1996); Joseph v. Sears Roebuck & Co., Civ. No. 97-00192 (filed Jan. 21, 1997); Siddiqui Group Enters., Inc. v. Shell Oil Co., Civ. No. 98-00606 (filed Feb. 26, 1998); Liberty Mutual Fire Ins. v. Ravannack, Civ. No. 00-01209 (filed Apr. 19, 2000); Holmes v. Consolidated Cos., Inc., Civ. No. 00-01447 (filed May 17, 2000); Loehn v. Hardin, Civ. No. 02-00257 (filed Jan. 30, 2002); Salatich v. America Online Inc., Civ. No. 03-02943 (filed Oct. 21, 2003); and Morales v. Trippe, Civ. No. 04-02483 (filed Aug. 31, 2004).

[10] For example, although it is difficult to reconstruct the record with certainty, Amato's financial records and testimony indicate that he may have spent at least $1,500 in 1999 and $2,250 in 2000 for dining and beverage expenses at restaurants at which he entertained Judge Porteous. Judge Porteous was required to report to the Administrative Office gifts of food and drink valued at more than $100 on his annual financial disclosure reports. However, Judge Porteous has never reported the receipt of any gift from Amato or any other attorney with matters before him.

controlled by Rowan near the Mariposa Ranch in Falfurrias. The government has also obtained evidence that Judge Porteous traveled from the Falfurrias camp by private plane to a similar hunting camp near San Antonio, Texas owned or controlled by Diamond. Further evidence indicates that, on at least one of the trips paid for by Rowan, Judge Porteous was accompanied on the trip by litigation counsel for Rowan.[11]

Judge Porteous disclosed two of these hunting trips in financial disclosure reports filed with the Administrative Office. On his report for calendar year 2004, filed May 12, 2005, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Rowan Company, for which he reported a fair market value of $1,000. On his report for calendar year 2005, filed July 24, 2006, in response to Part V, "Gifts," Judge Porteous reported that he received a hunting trip from Diamond Offshore, which he also valued at $1,000. Judge Porteous has yet to file his financial disclosure report for calendar year 2006. Judge Porteous's reports appear to understate the fair market value of the hunting trips. Evidence indicates that the cost to operate the private plane used to transport Judge Porteous to Falfurrias, Texas itself was approximately $1,000 an hour. According to commercial sports hunting locations in the same area, the fee for merely observing a hunt is approximately $200 a day in addition to the cost of the full hunting package for the other hunt participants, while the fee to participate in a Whitetail Buck hunt, which evidence shows was the subject of at least one of the hunting trips, would cost approximately $3,000 to $3,500 per participant. Together, the evidence suggests the total fair market value for each hunting trip would have been in excess of the $1,000 reported by Judge Porteous.

In addition to apparently understating the fair market value of his trips on financial disclosure reports submitted to the Administrative Office, Judge Porteous apparently failed to disclose his receipt of the trips to counsel and parties adverse to Rowan and Diamond in the actions over which he presided. The Court's PACER electronic records system indicates that, since the late 1980s, the Rowan Companies, Inc. and its related companies have been parties in more than a hundred cases filed in the Eastern District of Louisiana. Judge Porteous has presided over at least six such actions.[12] Of those cases, Hanna was an open matter during all of 2004, and therefore was pending when Judge Porteous received a hunting trip from Rowan. About one week after returning from his January 2006 trip with Rowan, he was assigned to preside over the Thomas matter. Despite his obligation to do so, Judge Porteous apparently failed to disclose the benefits he received from Rowan to counsel and the opposing parties in each of those cases.

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[11] There is evidence that one other federal district judge attended at least one of the hunting trips Rowan sponsored.

[12] See Lucas v. Tetra Technologies, Civ. No. 96-03501 (filed Oct. 28, 1996); Grubb v. Rowan Companies, Inc., Civ. No. 00-01075 (filed Apr. 10, 2000); Hoffman v. Rowan Companies, Inc., Civ. No. 01-01285 (filed Apr. 27, 2001); Hanna v. Rowan Company, Inc., Civ. No. 03-03285 (filed Nov. 21, 2003); Thomas v. Rowan Companies, Inc., Civ. No. 06-00166 (filed Jan. 13, 2006); and Cooley v. Crescent Drilling & Production, Inc., Civ. No. 06-01427 (filed Mar. 20, 2006).

Likewise, Diamond and its related companies were frequent litigants in the Eastern District of Louisiana, also parties in more than a hundred actions filed since the early 1990s. According to the PACER system, Judge Porteous presided over seven matters in which Diamond was a party.[13] Of those seven, Johnson was pending for part of, and Jones during all of 2005, the year in which Diamond provided Judge Porteous one of the trips according to Judge Porteous's financial disclosure report. The docket in each case does not reflect that Judge Porteous provided notice to the parties or counsel of the trip he received from Diamond.

C. Effect of Judge Porteous's Misconduct on the Administration of Justice

Judge Porteous's apparent misconduct has had a derogatory effect on the administration of justice in the Eastern District of Louisiana. That impact can be illustrated by the effect his conflicts had specifically on the litigation surrounding the Chapter 11 bankruptcy filing of Liljeberg Enterprises, Inc., and the cloud of suspicion those undisclosed conflicts raised about the validity of Judge Porteous's rulings in that matter. See In re Liljeberg Enterprises, Inc., Civ. Nos. 93-1794, 93-4249, 95-2922, and 94-3993. The bankruptcy action was commenced in 1993, and the matter was transferred and consolidated with related cases before Judge Porteous on January 16, 1996. On September 19, 1996, after Judge Porteous's assignment to the litigation and just weeks before the complex matter was scheduled to be tried to the bench, Liljeberg Enterprises moved to substitute Jacob Amato and Leonard Levenson as counsel of record. Judge Porteous signed the order granting the substitution on September 23, 1996. Amato handled the representation of Liljeberg on behalf of the Creely & Amato law firm. Levenson testified that he was told when he was hired by Liljeberg that he was being retained for strategy and assistance during the trial of the matter. However, based on recent public statements made by his client, Levenson now believes that his apparent close relationship with Judge Porteous influenced his client to hire him. Jacob Amato testified that he also believed his connection to Judge Porteous played a role in his client's decision to engage him.

One of several parties adverse to Liljeberg in these actions was LifeMark Hospitals, Inc. After Amato and Levenson were retained by Liljeberg, Lifemark in turn sought to associate a long-time friend of Porteous, Donald Gardner.

Gardner testified that he did not have experience handling federal litigation matters, and that Lifemark had competent local counsel. Gardner stated that the reason he was asked to associate himself on the case was his known relationship with Judge Porteous. LifeMark's counsel, Joseph Mole, testified that he hired Gardner because his client believed it was necessary to "level the playing field" following the retention by Liljeberg of Amato and Levenson – whose close connections to Judge Porteous were also well known among local attorneys. Indeed, prior

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[13] See Pierce v. Diamond Offshore, Civ. No. 98-01661 (filed June 4, 1998); Gonzalez v. Diamond Offshore, Civ. No. 99-00815 (filed Mar. 11, 1999); Sylve v. Oceaneering Int'l, Inc., Civ. No. 99-00841 (filed Mar. 15, 1999); Dillon v. Diamond Offshore, Civ. No. 99-02026 (filed June 30, 1999); Farrar v. Diamond Offshore Co., Civ. No. 03-00782 (filed Mar. 19, 2003); Johnson v. Diamond Offshore, Civ. No. 03-02505 (filed Sept. 4, 2003); and Jones v. Diamond Offshore, Civ. No. 04-00922 (filed Mar. 31, 2004).

to hiring Gardner, counsel for LifeMark filed a motion seeking Judge Porteous's recusal because of the appearance of partiality created by the close personal relationship among Porteous, Amato, Creely, and Levenson. LifeMark's counsel testified that he was not aware that Porteous had received cash payments from Amato or his partner Creely, and trips and other benefits from Amato, Creely, and Levenson. He testified that, had he known about those dealings, he would certainly have included that information in his motion to recuse. Judge Porteous denied the motion. In his opinion, Judge Porteous failed to disclose his solicitation and acceptance of cash, travel, and other things of value from Amato, Creely, and Levenson. Counsel for LifeMark filed a mandamus action with the Fifth Circuit, but the Circuit denied LifeMark's requested relief as well -- also without being informed of Judge Porteous's financial dealings with Liljeberg's counsel. Amato testified that his and his partner's gifts of cash and other benefits to Judge Porteous were never disclosed in the litigation, and admitted that they "probably" would have been a basis for recusal. As noted, three years later, while Liljeberg was still pending before him, Judge Porteous again solicited and received $2,000 in cash from Creely and Amato, which Porteous also failed to disclose to the counsel or litigants in the Liljeberg action, as well as the Administrative Office.

The written fee agreement between Gardner and LifeMark provided that Gardner would be paid a $100,000 flat fee for associating himself on the case. The agreement included a provision that, if the case was transferred to another judge, Gardner's engagement would end, but he would be paid an additional $100,000 severance. The fee agreement also contained a sliding-scale of additional fees contingent on various measures of LifeMark's success at trial. According to LifeMark's lead counsel, Joseph Mole, he included that contingent fee component to create an incentive for Gardner to deal honestly with LifeMark and not collude with Amato and Levenson. Mole saw Gardner as part of a circle of friends surrounding Judge Porteous, a circle that included opposing counsel Amato and Levenson. When asked whether Gardner was expected to give any part of his fee to Judge Porteous, both Gardner and Mole testified that he was not. Both also testified that Gardner informed LifeMark up front that he would not be able to influence Judge Porteous to do anything unethical or improper.

Mole testified that Gardner was retained solely because of his close relationship with Judge Porteous, and that his only active role in the case was to attend the bench trial. Gardner testified that he offered advice on how he thought Judge Porteous might react to LifeMark's evidence and strategies, but that counsel for LifeMark disregarded most of that advice. When questioned about the perceived need to pay $100,000 -- and potentially many hundreds of thousands more -- to an attorney who had no relevant federal experience but who was a friend of the Judge so that he would file an appearance and observe the bench trial, Mole testified that he thought his client was a victim of a broken system.

The non-jury trial before Judge Porteous commenced June 16, 1997 and continued with breaks over several weeks until July 23, 1997. Following the bench trial, Judge Porteous failed to rule for nearly three years. During the time that Judge Porteous's judgment was pending, the evidence reflects, as recounted above, that Judge Porteous asked for and received cash payments

from Creely and Amato, and was the beneficiary of numerous meals, trips, and other gifts from Creely, Amato, Levenson, and Gardner.[14]

On April 26, 2000, Judge Porteous ruled in favor of Amato and Levenson's client, Liljeberg Enterprises, Inc., on most of the important contested issues.[15] Porteous's ruling in favor of Liljeberg was partially reversed by the Fifth Circuit in an unusually critical opinion. Regarding Porteous's finding that LifeMark had breached a fiduciary duty it owed to Liljeberg by, among other things, failing to reinscribe a collateral mortgage and mitigate harms caused by not doing so, the Circuit excoriated Judge Porteous:

> . . . The extraordinary duty the district court imposed upon LifeMark . . . is inexplicable. . . .
>
> . . . The right of LifeMark to unilaterally release any part of the property from the mortgage is wholly at odds with the district court's discovery of a "duty" to reinscribe the collateral mortgage. . . .
>
> . . . [Judge Porteous's theory that LifeMark consequently owed a duty to mitigate] is a mere chimera, existing nowhere in Louisiana law. It was apparently constructed out of whole cloth.

In re Liljeberg Enters., Inc., 304 F.3d 410, 428-29 (5th Cir. 2002). Similarly, in finding that Judge Porteous clearly erred in his ruling that the judicial sale of the hospital must be overturned in favor of Amato and Levenson's client, Liljeberg, the Court censured the unsupported conclusions drawn by the Judge:

> . . . the district court's findings of a "conspiracy" to wrest control of the hospital and medical office building from St. Jude and Liljeberg Enterprises border on the absurd. . . .
>
> The district court's "conspiracy theory" conclusion is based, in part, on the view that Liljeberg Enterprises's or St. Jude's losses were caused by Lifemark. . . .

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[14] On May 28, 1999, Judge Porteous granted summary judgment in favor of Levenson's client in Alliance Gen. Ins. Co. v. Louisiana Sheriff's Auto. Risk Prog., Civ. No. 96-00961.

[15] According to American Express credit card records, Amato paid $130 at Commander's Palace – a fine dining restaurant in New Orleans – on April 25, 2000, the day on which Judge Porteous signed his long-pending judgment in favor of Amato's client. The judgement was filed on the docket on April 26, 2000. Amato has informed the government that Rhonda Danos, Porteous's secretary, was present with him at Commander's Palace on April 25, 2000, and that he paid that bill. Danos testified that the pending judgment was not discussed during the April 25, 2000 rendevous at Commander's Palace, that she never received any cash or bribe from Amato, and that the timing of her meeting with Amato at Commander's Palace on the day the judgment was signed was a coincidence.

> These findings turn on the remarkable but largely implicit conclusion . . . that, under Louisiana law, a second mortgagee . . . cannot initiate foreclosure proceedings. The district court and Liljeberg Enterprises offer no statutory or case law support for this proposition, for the simple reason that this is not the law.

Id. at 431.

V. Evidence that Judge Porteous Accepted Things of Value from Bail Bonds Unlimited and Louis and Lori Marcotte in Exchange for Access and Assistance

Louis and Lori Marcotte operated Bail Bonds Unlimited, a bail bonds company with business before the 24th JDC. As a result of the FBI investigation into corruption in the 24th JDC, both Louis and Lori Marcotte pleaded guilty to bribing Louisiana state judges in addition to other offenses. In interviews following their guilty pleas, the Marcottes said they paid for expensive meals, trips, and other benefits for Judge Porteous in exchange for favorable treatment when he was a state judge in the early 1990's, and that they continued to pay for meals while he was a federal judge. The Marcottes estimated the cost of weekly Friday lunches they provided for Judge Porteous and his staff and other invitees at about $500 each. They also stated that they paid for innumerable additional meals and drinks at expensive restaurants that cost hundreds of dollars each. In addition, the Marcottes said they paid for numerous car repairs for Judge Porteous and his family, paid for a fence to be built for him, gave parking privileges to Porteous's son at their office near the courthouse, and provided business to his son's legal courier service.

Other witnesses confirm that Louis Marcotte did numerous favors for and gave many gifts to Judge Porteous while he was a state court judge. Former Marcotte employees say that Marcotte paid for car repairs for Judge Porteous and a fence for Judge Porteous' house. Other witnesses report that Marcotte paid for many meals for Judge Porteous and at least one trip to Las Vegas, Nevada for Judge Porteous. Additional sources report, and the FBI in one instance observed, that Louis Marcotte continued to take Judge Porteous out for meals when he was a federal judge.

In 1992, the Marcottes invited Judge Porteous to Las Vegas with them, but he was unable to attend. Several months later, around August 1992, Rhonda Danos called the Marcottes to inform them that Judge Porteous "was ready to go" to Las Vegas with them. The Marcottes and two local attorneys paid to take Judge Porteous and another state judge to Las Vegas. Danos booked the trip on her credit card and then sought reimbursement from Louis Marcotte. The Marcottes stated that the arrangement was designed to disguise the fact that they and other lawyers were paying for the trip. They also stated that they invited the other attorneys and judge to provide cover for Judge Porteous.

In July 1999, the Professional Bail Agents of America paid $206.80 for lodging for Judge Porteous at their conference at the Beau Rivage in Biloxi, Mississippi. Judge Porteous spoke at the conference. Judge Porteous did not report this payment on his financial disclosure form (there is no minimum value for required reporting of travel reimbursements). The charge for Porteous's lodging was paid by the PBAA out of its "master account." In turn, the Marcottes

made a $7,000 contribution to cover expenses on that master account. The Marcottes also provided the PBAA with a list of people whose charges should be credited against the Marcotte's credit card. That list included Porteous's secretary, Rhonda Danos.

The Marcottes asserted that they also paid for Porteous's secretary to go to Las Vegas, Nevada for many years with them when they were attending annual bail bonding conventions there. This began in 1992 and continued through the first few years Judge Porteous was a federal judge. The Marcottes have provided the FBI with pictures that show the Judge's secretary in their company in Las Vegas. They claimed that they covered all of Danos's costs during the trips. For several years, the Marcottes also provided Danos and Judge Porteous with five to ten tickets each year to an annual police fund-raising party, valued at $100 per ticket. The expenses borne by the Marcottes on behalf of the Judge's secretary tend to corroborate their claim that they provided gifts to Judge Porteous in exchange for access. The Marcottes explained that Danos was the gatekeeper for access to Judge Porteous, and that it was therefore essential to their purpose that they kept Danos happy by plying her with gifts as well.

According to the Marcottes, in exchange for their generosity with Judge Porteous and Danos, while Judge Porteous was a state court judge he gave the Marcottes immediate access to him on bonding whenever they needed him. The Marcottes say he granted most of their requests. Louis Marcotte told the FBI that Judge Porteous was more likely to grant a problematic request after a lunch or a car repair. Judge Porteous also made introductions for the Marcottes to other state judges and lent his support by vouching to other judges that Louis Marcotte was a good person to deal with on bond issues. He also spoke to other state judges about the benefits to the court system of split bonds, a practice that was extremely beneficial to the business of Bail Bonds Unlimited. Following his own agreement to plead guilty to honest services fraud and to cooperate with the government, former 24th JDC judge Ronald Bodenheimer corroborated much of what the Marcottes told the FBI concerning the assistance Judge Porteous provided around the courthouse for their business interests in the 24th JDC.

In addition to making himself accessible and assisting the Marcottes on bonding matters, at Louis Marcotte's request Judge Porteous expunged the felony convictions of two Marcotte employees shortly before Judge Porteous left the state bench in 1994. This permitted the employees to work for the Marcottes in the bail bonding business, which otherwise was prohibited under Louisiana law. It appears that Judge Porteous decision to expunge the convictions was contrary to law. Nonetheless, Porteous claimed in an interview with the New Orleans Metropolitan Crime Commission that an Assistant District Attorney was present during the hearing and failed to object on the record. Even if true, there is no indication that the Assistant District Attorney was aware that Porteous was the recipient of a stream of things of value from the Marcottes, all of which the Marcottes claim they provided with the specific intent to influence Judge Porteous.

Although the Marcottes have made many allegations of improprieties involving Judge Porteous, they have pleaded guilty to charges of extensive fraudulent conduct. They also admit that they never obtained an explicit agreement with Judge Porteous that he would grant bond requests in exchange for favors. They claim instead that the agreement was implicit in the

relationship, and that the Judge knew very well why they lavished him and his long-time secretary with food, drinks, trips, favors, and other things of value.

VI. Further Circumstantial Evidence that Judge Porteous Engaged in Corrupt Activities

The investigation has uncovered large amounts of unexplained cash being deposited in Judge Porteous's accounts. Financial records reveal that Judge Porteous deposited more than $57,000 in cash into his checking account between 1998 and 2000. Additional records received from Fidelity Homestead Association show that five separate deposits of currency totaling approximately $20,000 were also made into the Judge's money market account from 1998 to early 2000. This account was not reported on Judge Porteous's bankruptcy petition. In addition, one of the deposits, made two days after Judge Porteous returned from his Las Vegas trip, was in the amount of $5,000, roughly the amount he withdrew over the "bachelor party" weekend, despite casino records that estimated a $1,200 loss during that trip.

In addition, the investigation has revealed that Judge Porteous's secretary, Rhonda Danos, paid for many of his expenses from her own bank account. While Judge Porteous did write checks to her, the FBI was not able to establish that he fully reimbursed her. In 1999 and 2000, for example, Danos paid $41,621.15 for credit card bills and other expenses for Judge Porteous; during the same period, she received $32,554.51 in checks from him. Over the same two year period, Danos also made $60,027.80 in cash deposits, a greater sum than her payroll and other sources of income for the same period. Focusing on year 1999 in particular, her financial records indicate that she may have received as much as thirty to forty thousand dollars in unexplained deposits. In addition, in her testimony about her 1999 financial activities, Danos could not account for nearly ten thousand dollars in excess of her admitted sources of income that year, even giving her the benefit of dubious, post-hoc explanations for some sources of funds. Together, these facts evidence that Danos – on whom Judge Porteous relied for payment of many of his own expenses -- received additional, unexplained cash during the period that the judgement in Lilieberg was pending. Indeed, the Marcottes stated in interviews with the FBI that Danos was used specifically to disguise their payments in connection with the 1992 trip to Las Vegas for Judge Porteous.

VII. Evidence that Judge Porteous Is Incompetent to Serve

During the course of this investigation the Department has learned that Judge Porteous has obtained the reports of medical examiners concluding that he is incompetent to render decisions as a federal judge because of permanent mental and psychological impairments. In correspondence with Your Honor, Judge Porteous stated that he believes he no longer can meet the responsibilities that fall to him as a judge, and that the reports of a psychologist and psychiatrist confirm that every day he sits on the bench is a disservice to his fellow judges, to the parties who appear before him, and to the people of this country who put their trust in the judiciary. This mental impairment follows a history of alcoholism and reckless gambling, demonstrated in financial records and attested to by witnesses with whom he has had personal relationships. Therefore, in addition to the many allegations of judicial misconduct recited above, Judge Porteous's self-professed inability to render competent and fair decisions as a federal judge and the chronicle of his reckless and dishonorable personal behavior while on the

federal bench also serve as a basis for possible disciplinary action by the Court or referral to Congress for impeachment.

CONCLUSION

As noted earlier, issues of statute of limitations, the materiality of the alleged false statements, the government's twin burdens of proof and unanimity at trial, and the availability of alternative remedies persuaded the Department that criminal prosecution was not warranted. The results of the FBI's investigation into allegations of misconduct concerning Judge Porteous, however, raise serious doubts about his suitability for office under the constitutional standard of good behavior on which that service is contingent. The instances of Judge Porteous's dishonesty in his own sworn statements and court filings, his decade-long course of conduct in soliciting and accepting a stream of payments and gifts from litigants and lawyers with matters before him, and his repeated failures to disclose those dealings to interested parties and the Court all render him unfit as an Article III judge. Based on the evidence of pervasive misconduct described herein, the Department respectfully submits this complaint for any further action Your Honor may deem warranted.

Sincerely,

John C. Keeney

John C. Keeney
Deputy Assistant Attorney General
Criminal Division
United States Department of Justice

REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

Submitted

November 20, 2007

ACCOMPANIED BY
2 VOLUMES OF EXHIBITS

CONFIDENTIAL

I. Jurisdictional Basis

On May 18, 2007, the Chief Judge of the United States Court of Appeals for the Fifth Circuit received a formal complaint of judicial misconduct involving Judge G. Thomas Porteous, Jr., United States District Judge for the Eastern District of Louisiana. (See Exhibit A) Chief Judge Edith H. Jones expeditiously reviewed the complaint under the authority of 28 U.S.C. §352(a), and determined under 28 U.S.C. §352(b) that it was not appropriate for summary dismissal. Accordingly, under 28 U.S.C. §353(a), Chief Judge Jones appointed a special committee to investigate the complaint, composed of Chief Judge Jones, Circuit Judge Fortunato P. Benavides and District Judge Sim Lake. Notice of this action was provided to Judge Porteous. Under 28 U.S.C. §353(c), the Special Investigatory Committee ("the Committee") was required "to conduct an investigation as extensive as it considers necessary" and to file" expeditiously" with the Judicial Council "a comprehensive written report" presenting "both the findings of the investigation and the committee's recommendations for necessary and appropriate action" by the Judicial Council.

The following report describes the Special Investigatory Committee's procedure, the scope of its investigation, the course of dealings with Judge Porteous and his counsel, the Committee's findings of fact and conclusions of law, and a recommendation of appropriate disciplinary action.

Two volumes of exhibits accompany this Report and include documents and testimony the Committee believes are most pertinent. While the exhibits bear initials for purposes of the index hereto, the reader may correlate them with the trial evidence identified in the Findings and Conclusions by looking at the "Hearing Exhibit" column of the Exhibit Index. On request, any member of the Council may review any of the witness statements, correspondence, and documents underlying this report.

II. Course of Proceedings

On May 18, 2007, Chief Judge Jones received from the United States Department of Justice ("DOJ") a Complaint of Misconduct against Judge G. Thomas Porteous, Jr. of the United States District Court for the Eastern District of Louisiana (Exhibit A). The Complaint was filed pursuant to 28 U.S.C. § 351 et seq. by John C. Keeney, Deputy Assistant Attorney General for the Criminal Division of the U.S. Department of Justice.

DOJ stated that it had determined, after a far-ranging investigation, not to prosecute Judge Porteous for various alleged crimes, including but not limited to (a) the filing of false statements under penalty of perjury during his and his wife's personal Chapter 13 bankruptcy case; (b) repeated violations of bankruptcy court orders; (c) deceptive pre-bankruptcy conduct with respect to his unsecured creditor, Regions Bank; and (d) receipt of money and things of value from lawyers

with cases pending before him. The 22-page, single-spaced Complaint alleged detailed facts supporting the charges and was derived from a years-long investigation of Judge Porteous and other persons in the New Orleans/Jefferson Parish area. DOJ obtained an Order permitting the release of grand jury materials for use in this disciplinary investigation pursuant to Federal Criminal Rule 6(e)(3)(E)(i).

Because the Chief Judge is not empowered to resolve factual disputes, Chief Judge Jones appointed Fifth Circuit Judge Fortunato P. Benavides and United States District Judge Sim Lake to assist her as a Special Investigating Committee (the "Committee"). *See* 28 U.S.C. § 353(a)(2); Rules 4(E) and 8(A) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability (hereafter, "5th Cir. Misconduct Rule"). The Committee retained a former United States Attorney for the Southern District of Texas, Mr. Ronald G. Woods, Esquire, of Houston, Texas, as an investigator. 5th Cir. Misconduct Rule 9(C) and (D). Judge Porteous was promptly notified of the Complaint and the appointment of the special committee by letter dated May 24, 2007.[1] 28 U.S.C. § 353 (a)(3); 5th Cir. Misconduct Rule 4(F)(2) (Exhibit D-1).

[1] Nearly all correspondence in this matter has been instantaneously faxed or e-mailed to the recipients and hence was both sent and received on the dates identified throughout.

Through Mr. Woods, the Committee began coordinating with DOJ attorneys to retrieve and organize grand jury testimony of over a dozen witnesses and obtain thousands of documents relevant to the allegations in the Complaint.

On June 11, 2007, Judge Porteous's then-counsel Kyle D. Schonekas and Herbert V. Larson, Jr. of New Orleans, (who represented Judge Porteous during the federal grand jury investigation), communicated an offer by Judge Porteous to retire voluntarily upon his being certified by the Judicial Council of the Fifth Circuit as disabled to continue performing the duties of a federal judge. Judge Porteous sought to receive "all customary retirement benefits" upon waiver of the length of service requirement pursuant to 5th Circuit Misconduct Rule 13(F)(5). (Exhibit D-2) This request was predicated on a petition the Judge had filed in May of 2006, seeking a certificate of disability from Chief Judge Jones. *See* 28 U.S.C. § 372(a).[2] Chief Judge Jones denied the request at that time and again when it was renewed in September of 2006, based on insufficient medical documentation of a permanent mental disability. The June 11, 2007, letter suggested that Chief Judge Jones might have to recuse from the misconduct proceeding because she had

[2] As of May of 2006 Judge Porteous asserted that he was a victim of serious mental depression arising from alcohol abuse, the loss of his house in Hurricane Katrina, his wife's then-recent and sudden death, and the ongoing grand jury investigation.

already ruled adversely to Judge Porteous on his foremost defense —disability by reason of depression.[3]

The Committee declined for two reasons to forward the Judge's offer to the Fifth Circuit Judicial Council. *See* letter of June 25, 2007 (Exhibit D-3). First, to do so would be inconsistent with the Committee's duty to conduct an investigation, which was in its infancy, and to file a comprehensive report with the Fifth Circuit Judicial Council. 28 U.S.C. § 353(c); 5th Cir. Misconduct Rule 9(E). Second, Judge Porteous had misinterpreted the statutory provision that authorizes waiver of length of service but not the minimum age for a judicial disability retirement. 28 U.S.C. §§ 354(a)(2)(B)(ii); 371; and 372(b). In its letter, the Committee also notified Judge Porteous that it would conduct a hearing on the Complaint's allegations on August 27-29, 2007; that he could avail himself of the procedures in 5th Circuit Misconduct Rule 11; and that he must file a formal answer to the Complaint on or before July 10. *See* 5th Cir. Misconduct Rule 10(A) and (B).

On July 2, 2007, Messrs. Schonekas and Larson informed the Committee that they no longer represented Judge Porteous (Exhibit D-4). This letter was followed, on July 5, by a letter from Judge Porteous seeking a continuance of the hearing; appropriate discovery rights; and a dismissal because of the Complaint's

[3] By June of 2007 as counsel's letter reveals, several stressors in Judge Porteous's life had been removed. He had abstained from alcohol for a year; the damage to his house had been fully reimbursed by insurance; and the grand jury investigation against him had terminated with a decision not to prosecute.

failure to be verified under oath (Exhibit D-5). *See* 5th Cir. Misconduct Rule 2(F). Judge Porteous also asserted that he might renew his disability request.

On July 10 the Committee informed Judge Porteous that it agreed to a continuance and reset the hearing for September 26-28. *See* Letter of July 10, 2007 (Exhibit D-6). The Committee explained that its process was being expedited in part to benefit Judge Porteous, who had already been subject to a well-publicized multi-year grand jury investigation. The Committee informed the judge that the final scope of the hearing would depend on his response to the Complaint (the date of which was also extended) and reassured him of adequate advance notice concerning the Committee's use of grand jury witnesses and documents. The Committee also informed Judge Porteous that it had retained another former United States Attorney for the Southern District of Texas, Lawrence D. Finder, Esquire, of Haynes and Boone in Houston, Texas, to assist Mr. Woods.

A new attorney, Michael L. Ellis, notified the Committee on August 2 that he represented Judge Porteous (Exhibit D-7). He requested further extensions of the hearing and response date. On August 3 the Committee refused to continue the hearing but extended the response date to August 17 (Exhibit D-8).

Committee counsel then undertook to obtain orders of immunity from federal prosecution for prospective witnesses who had testified before the grand

jury. These witnesses included friends of Judge Porteous, his secretary, and his bankruptcy counsel.

In a letter dated August 9, Judge Porteous sought dismissal of the Complaint for alleged technical defects[4] and requested the names and addresses of the witnesses identified therein (Exhibit D-9). Most of those witnesses were close friends or associates of Judge Porteous.

Responding on August 14, Committee counsel defended the Complaint's sufficiency as being based on sworn grand jury testimony, business records of casinos, banks, and credit card companies, and official bankruptcy court records (Exhibit D-10).[5] The Committee pointed out that the judge's former attorney had been deeply involved in the grand jury investigation and, in fact, had advised Judge Porteous's bankruptcy counsel to assert attorney-client privilege during his grand jury appearance. (The assertion was ultimately overcome, and the attorney, Mr. Lightfoot testified, after a judicial finding that the crime-fraud exception applied.) The Committee also offered to make all of its documents available for review at counsel's office in Houston, and the Committee named and provided addresses of all prospective witnesses and their attorneys.

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[4] Judge Porteous contended that the DOJ Complaint was unverified, contrary to 5th Cir. Misconduct Rule 2(F) and lacked the names and addresses of witnesses it identified. 5th Cir. Misconduct Rule 2(B)(3).

[5] On August 29, to alleviate any uncertainty, Chief Judge Jones identified a misconduct complaint based on the same facts and allegations articulated in the DOJ Complaint. *See* 5th Cir. Misconduct Rule 2(J).

Two days later, Mr. Ellis, Judge Porteous's new counsel, reasserted that his client claimed to suffer from memory lapses related to mental depression (Exhibit D-11). These conditions allegedly rendered the judge incapable of performing his duties on the federal bench or assisting competently in his own defense. Updated reports from Judge Porteous's psychological advisers were attached. Mr. Ellis also represented that he would call no witnesses on the substance of the Complaint's allegations and would rely solely on Judge Porteous's medical records.

In an abundance of caution, the Committee elected to request a psychiatric evaluation of Judge Porteous under the direction of Dr. Glen O. Gabbard, the Director of Baylor College of Medicine Psychiatric Clinic in Houston. Judge Porteous cooperated by visiting Houston for the evaluation and furnishing all of his prior relevant medical records to the doctor's team. Dr. Gabbard was asked to determine whether Judge Porteous is capable of performing the duties of a federal judge and capable of assisting counsel in a defense against the Complaint. Dr. Gabbard's report, furnished first to Judge Porteous orally and then in written form to the Committee, answered both questions in the affirmative. *See* Exhibit C, page 10. The report concluded that Judge Porteous is fully capable, but at this point in his career he "dislikes" being a judge. *Id.* He looks forward to life off the bench, is enjoying the company of his grandchildren, *See* Exhibit C, p. 4, and is

considering opportunities for mediation, teaching, and speaking, *See* Exhibit C, pp. 4, 10.

The delay occasioned by the psychiatric evaluation required the hearing to be reset to October 29 in New Orleans. The Committee's preparations continued apace in August and September. An order of federal immunity was obtained for Judge Porteous's testimony. Counsel for Judge Porteous was sent copies of significant documents: the judge's financial disclosure reports; the certified bankruptcy court file; Regions Bank loan documents; and bankruptcy attorney Lightfoot's file and correspondence. Committee counsel furnished the DOJ correspondence that identified all grand jury documents, comprising nine bankers' boxes, that the Committee had received. All of these were offered again for inspection by Judge Porteous's attorney. Committee counsel promised and did seasonably furnish pertinent grand jury transcripts and copies of FBI 302 reports of witnesses who would be called at the hearing.[6] (Exhibits D-13-15) Finally, the Committee invoked Local Rule 55.2 of the Southern District of Texas to require any disputes over admissibility of documents to be raised at least three business days before trial.

Counsel for the Committee traveled to New Orleans several times to interview witnesses for the hearing. As the hearing approached Committee

[6] Copies of complete grand jury testimony and/or 302 reports of the witnesses were transmitted to Judge Porteous's attorney beginning October 8, 2007.

counsel raised with Judge Porteous's attorney whether Judge Porteous would voluntarily resign in lieu of continuing with a hearing and disciplinary procedures. Mr. Ellis responded that Judge Porteous was receptive to resigning and it appeared that a deal had been struck whereby Judge Porteous would resign in a short period of time, and the Committee would recommend to the Fifth Circuit Judicial Council that it conclude the proceedings as moot. A Memorandum of Understanding was prepared by the Committee memorializing the proposed agreement.

Late on Monday, October 15, Committee counsel were informed by Mr. Ellis that Judge Porteous had reconsidered over the preceding weekend and refused to sign the Memorandum of Understanding previously executed by Chief Judge Jones for the Committee.

On Tuesday, October 16, Mr. Ellis notified the Committee of his withdrawal because of an "impasse with respect to the future course of my representation" of the judge. Mr. Ellis attached a copy of his resignation letter, which referred to "irreconcilable differences" between him and the judge on how to proceed, and which advised Judge Porteous to prepare for the October 29 hearing (Exhibits D-16 & 17).

On October 18, Committee counsel furnished to the judge updated, specific Charges of Judicial Misconduct, essentially a complete outline of the investigators' proposed proof at the hearing (Exhibit B). The principal subjects of the charges

are ethical and criminal violations related to the actions described at the beginning of this section.

Responding to this letter, which also offered additional witness statements, Judge Porteous requested a continuance of the October 29 hearing (Exhibit D-18).

The Committee denied any further continuance in a letter that recited detailed reasons for the denial (Exhibit D-19). In three additional letters addressed to Judge Porteous on October 19, the Committee listed all of the evidence that had been furnished to the judge or his counsel (Exhibits D-20-22).

On October 24, Committee counsel confirmed their delivery to Judge Porteous's chambers of documents including personal credit card records; financial analyses of his secretary's and his own bank accounts; casino records; and an FBI 302 for Edward F. Butler, former President of Regions Bank (Exhibit D-23).

Committee counsel sent Judge Porteous an exhibit list on Friday, October 26, and recited again the list of document disclosures previously made to Judge Porteous or his counsel (Exhibit D-24).

Members of the Committee, Special Counsel and Chief Judge Jones' assistant arrived in New Orleans over the weekend to complete preparations for the hearing. Evidence was taken on Monday and Tuesday, October 29-30. The Committee investigators presented ten live witnesses, the second of whom was Judge Porteous. 96 documents were admitted into evidence. Two attorneys from

DOJ represented the complainant at the hearing but did not submit oral or written argument. *See* 5th Cir. Misconduct Rule 12(c).

Judge Porteous represented himself. He presented oral argument and offered motions; he cross-examined witnesses; and he presented two defense witnesses (Claude C. Lightfoot, Jr. and Don Gardner). He represented himself competently.[7]

Throughout its investigation leading up to the hearing, the Committee fully apprised Judge Porteous of evidence that would be offered against him and afforded him all rights conferred by 5th Cir. Misconduct Rules 10 and 11.

Having compiled as complete information as it could on the allegations in the charge document dated October 18, the Committee files the following Findings of Fact and Conclusions of Law.

Any member of the Council is welcome to review any or all of the underlying files, which are available both in New Orleans and Houston.

III. Findings of Fact and Conclusions of Law

The Committee commenced its factual investigation following its receipt of the "Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr." on May 21, 2007. The Committee engaged the services of attorneys

[7] Although Judge Porteous continued to assert some type of disability during the hearing, he offered no further evidence of such, and the record belies any defects of memory or legal ability.

Ronald G. Woods and Lawrence D. Finder as Committee Counsel to assist its investigation.

Committee Counsel were tasked with numerous duties, including but not limited to: reviewing thousands of pages of documents which had been subpoenaed by the federal grand jury; reviewing reports of investigation created by the Federal Bureau of Investigation; reviewing the transcripts of numerous witnesses who were subpoenaed and testified before the federal grand jury; conducting numerous independent witness interviews; obtaining the assistance and cooperation of federal prosecutors and law enforcement agents who had worked on the criminal investigation; performing necessary legal research; requesting statutory immunity for witnesses, when appropriate; drafting the charge of judicial misconduct; calling witnesses in the hearing on judicial misconduct; assisting in the drafting of this report; and generally providing legal counsel to the Committee as needed.

The Committee herewith reports its factual findings based on the evaluation of the evidence and the credibility of the witnesses, and its conclusions of law in the following five substantive areas:

1. Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court;
2. Bank Fraud Involving a Loan at Regions Bank;
3. Receipt of Cash, Gifts and Other Forms of Remuneration;

4. Financial Disclosure Report Violations; and

5. Violations of the Canons of the Code of Conduct for United States Judges

Since the factual findings often involve acts of misconduct that simultaneously violated ethical canons, criminal statutes and financial disclosure obligations, there is unavoidably a certain amount of repetition among the five substantive categories of this report.

1. BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

Judge Porteous chose to be a public servant and support his family on his judicial income. He had a wife, Carmella (now deceased), with whom he had several children. He had a mortgage, car notes, private school tuition expenses, and other normal expenses associated with everyday living. Carmella did not have steady employment outside of the home and did not contribute much to the family's income. Porteous also succumbed to alcohol abuse and excessive gambling, and was not able to support his lifestyle on a judicial salary. By the end of 2000 his credit card debt exceeded his annual income as a United States District Judge.

In June or July of 2000 Porteous engaged bankruptcy counsel Claude Lightfoot (Hearing Transcript, pp. 442 – 448).[8] As will be seen below, Lightfoot

[8] Future references to Hearing Transcript are identified as "p. ___."

and Porteous attempted to "workout" a settlement with certain unsecured creditors (primarily credit card companies), while consciously preferring other unsecured creditors (not all of whom were disclosed to Lightfoot by Porteous). The "workout" attempt failed, and Lightfoot then advised Porteous to file Chapter 13 bankruptcy. When Porteous expressed concern that a public bankruptcy filing would be embarrassing, Lightfoot suggested that the original petition be filed with false names, and later amended with the correct names – an idea that Porteous embraced.

A debtor who files for Chapter 13 bankruptcy assumes certain responsibilities. The debtor must abide by the rules set by the Chapter 13 trustee (11 U.S.C. § 521(a) (2)) and by the order(s) of the Bankruptcy Judge.

A. False Petition

Porteous admitted that on March 28, 2001, he and Carmella filed a Voluntary Ch. 13 Bankruptcy Petition in the Eastern District of Louisiana Bankruptcy Court, Docket No. 01-12363 (from Ex 1; SC122).[9] The Chapter 13 Trustee was S.J. Beaulieu, Jr.

At his hearing before the Committee, Porteous did not dispute that his voluntary petition listed false names for the debtors, i.e., "Ortous, G.T." and joint

[9] On June 4, 2001, then Chief Judge Carolyn King assigned U.S. Bankruptcy Judge William Greendyke of the Southern District of Texas to preside over this case in the Bankruptcy Court for the Eastern District of Louisiana. See EX. 1, SC 65.

debtor "Ortous, C.A.," or that the debtors' listed address was "PO Box 1723, Harvey, LA." (Ex 23) (pp. 52 – 53) instead of the Porteous's home or office address. Porteous also agreed that his application for "PO Box 1723" was dated March 20, 2001, or about eight days prior to filing Chapter 13 (pp. 53 – 55).

Porteous acknowledged that the jurat to the original Chapter 13 petition reads, "I declare under penalty of perjury that the information provided in this petition is true and correct." He admitted that neither his name nor his wife's name is "Ortous" and conceded that the bankruptcy petition that he signed under penalty of perjury contained false information. (p. 55). Porteous filed an Amended Voluntary Chapter 13 Petition (Ex 1; SC 120) on April 9, 2001. This amended pleading contained the correct names of the debtors and the Porteous long-time residential street address.

Lightfoot testified, under questioning by Porteous, that the intentional inclusion of aliases (and presumably the misleading PO Box address) in the bankruptcy petition was his "stupid idea," but that Porteous signed the petition. Lightfoot also testified that the falsifications were not intended to be fraudulent, but to save Porteous the embarrassment of the public's knowing that he was bankrupt (pp. 435 – 436).

This explanation for filing a misleading and false petition in a federal bankruptcy case is inconsistent with Judge Porteous's ethical obligation.

Porteous agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities. Indeed, the law mandates that judges file annual financial disclosure reports for the very purpose of exhibiting transparency to the public. The scheme to obfuscate the true identities of the debtors not only contravened Porteous's ethical duty as a sitting Article III judge, but was also a false statement made under oath. Porteous's explanation for lying is as irrelevant as Lightfoot's attempt to take responsibility for Porteous's conduct. A lay person might argue that (s)he relied upon the advice of counsel when knowingly putting false information into a court document filed under penalty of perjury, but a federal judge cannot reasonably avail himself of such a defense.

The crime of perjury requires that Porteous willfully subscribed as true a material matter, i.e., his name and that of his wife, which he did not believe to be true. 18 U.S.C. §1621(2). The crime of conspiracy to commit perjury requires one to know of the illegal purpose of the agreement and willfully join it, with an overt act in furtherance of the agreement. 18 U.S.C. §371.

B. Impermissible Debts

Porteous was explicitly warned by the Chapter 13 trustee, S. J. Beaulieu, his own attorney, and Judge Greendyke that he could not incur more debt while in bankruptcy. Examples of incurring debt would include using credit cards

(including credit cards not disclosed to the trustee) and taking out gambling markers. A "gambling marker" is a form of credit.[10]

Following the filing of his Chapter 13 bankruptcy petition, Porteous received a pamphlet from Beaulieu titled, *Your Rights and Responsibilities in Chapter 13* (Ex. 11; SC 399 - 403). Page six of that pamphlet contained the admonition, "you may not borrow money or buy anything on credit while in Chapter 13 without permission from the bankruptcy Court." (SC 402). Porteous testified that he recalled receiving the pamphlet from Beaulieu (p. 60). Similarly, Porteous testified that in his "§341 hearing" (first meeting of creditors) of May 9, 2001 (Ex. 22; SC 598), in the presence of Lightfoot, he recalled being told by Mr. Beaulieu that he could not use credit cards any longer and understood that he could not incur more credit while in bankruptcy (pp. 61 – 62). Porteous was also aware of Judge Greendyke's Order of June 28, 2001 (docketed July 2, 2001) confirming Porteous's Chapter 13 plan (from Ex. 1; SC 50), which plainly warned that "[t]he debtor(s) shall not incur additional debt during the term of this Plan except upon written approval of the Trustee." (p. 62).

[10] A gambling "marker" is a form of credit extended by a gambling establishment, such as a casino, that enables a customer to borrow money from the casino. The marker acts as the customer's check or draft to be drawn upon the customer's account at a financial institution should the customer not repay his/her debt to the casino. The marker authorizes the casino to present it to the bank for negotiation and draw upon the customer's bank account any unpaid balance after a fixed period of time. Porteous testified that this definition of a "marker" was accurate (p. 64).

In spite of the clear directives against a Chapter 13 debtor incurring more debt, Porteous continued to incur debt through gambling and improper use of credit cards. In fact, according to lead FBI case agent Wayne Horner's testimony, Porteous took out approximately $31,000 in markers from August 20, 2001, through July 5, 2002, at various casinos, including Treasure Chest Casino in Kenner, Louisiana; Harrah's Casino in New Orleans, Louisiana; Beau Rivage Casino in Biloxi, Mississippi; Grand Casino in Gulfport, Mississippi. Out of the $31,000 in markers, Porteous left the casinos owing $14,000, which he paid back at later dates (pp. 294-315) (Ex. 49; SC 1131(Grand Casino); Ex. 51; SC 1198 (Beau Rivage); Ex. 52; SC 1314 (Harrah's); and Ex. 54; SC 1435-1439 (Treasure Chest)).

As further examples, Porteous admitted that from August 20 -21, 2001, he borrowed $8,000 by taking out eight $1,000 markers from the Treasure Chest Casino in Kenner, Louisiana (pp. 65 – 66). Porteous further admitted: taking out a $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (p. 67); taking out another $1,000 marker from Treasure Chest on August 21, 2001 (Ex. 54; SC1438) and not paying it back until September 9, 2001 (pp. 67 – 68); and taking out a $1,000 marker from Treasure Chest on August 21 but not paying it back until September 15, 2001 (Ex. 54; SC 1438). Porteous did not dispute that during October 17-18, 2001, he also

borrowed via markers in excess of $5,900 from the Treasure Chest Casino, $4,400 of which was not paid back until November 9, 2001 (p. 70).

Markers were not the only means by which he incurred more debt during the pendency of the bankruptcy. Porteous admitted that his co-debtor wife used a Fleet credit card on March 8, 2001, at Harrah's Casino in New Orleans (p. 73). The Fleet credit card was not listed in on the debtors' Schedule F (Creditors Holding Unsecured Nonpriority Claims, a list including credit cards) of the Amended Bankruptcy Petition, filed April 9 [2001] (from Ex. 1; SC 102-105). As will be discussed below, the balance of the Fleet card was paid in full immediately prior to bankruptcy by Porteous through his secretary, Rhonda Danos, thus making Fleet a preferred creditor and enabling Porteous and/or his wife to have a credit card available for gambling and other uses.[11]

Porteous did not dispute that the Fleet card (Ex. 21) was not listed among the fifteen disclosed credit cards appearing on Schedule F of his Amended Bankruptcy Petition (pp. 74 – 75). He also admitted that use of the Fleet credit card for any purpose post-bankruptcy was an extension of credit and the incurring of additional debt (p. 75). For example, Porteous admitted that the Fleet credit card was used for purchases and cash advances in the amount of $734.31 throughout May and June 2001 (Ex. 21; SC 592) (pp. 76 – 77). These extensions of credit, as indicated

[11] The Fleet credit card was in the name of Carmella Porteous.

by the billing statement, included use at the Treasure Chest casino on May 16, 2001 ($174.99) and the Oasis Hotel in Gulfport, Mississippi on May 28, 2001 ($105.65). Similarly, Porteous admitted that the Fleet credit card was used at Harrah's in New Orleans for $91.99 on June 24, 2001 and Treasure Chest for $68.99 on July 1, 2001 (Ex. 21; SC 593) (pp. 77).

The omission of the Fleet credit card from Schedule F could hardly have been inadvertent. Lightfoot sent out "workout" letters to thirteen unsecured creditors (from Ex. 1; SC 297 - 299) prior to Porteous filing bankruptcy. He notified Judge and Mrs. Porteous of the list of creditors and explicitly stated which credit card companies were contacted ("I enclose a copy of the letters and one copy of the attachments I included with each that I have sent to all of the unsecured creditors, with the exception of Regions Bank, which we wanted to exclude, proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy."). The thirteen unsecured credit card companies are then listed on the attachment (SC 298). Conspicuously absent from the list of thirteen is Fleet. Even had Porteous negligently missed Fleet on Schedule F, the Lightfoot workout letter would have given him prior notice of its omission, and would have created an earlier opportunity for Porteous to have called the omission to Lightfoot's attention.

Incurring additional debt via gambling markers and use of an undisclosed credit card were just two acts of concealment by Porteous during bankruptcy. He also failed to disclose other salient facts to the trustee, such as the impending receipt of a tax refund due and owing him and his wife, the existence of a Fidelity money market account, and the undervaluing of his Bank One checking account. This pattern of concealment is now addressed.

C. Other Bankruptcy Misrepresentations

Porteous admitted that his Amended Bankruptcy Petition of April 9, 2001 contained a "Chapter 13 Schedules and Plan," Schedule B, Question 17 (from EX 1; SC 95) requesting "other liquidated debts owing debtor including tax refunds . . ." and that he answered the question by checking the "**none**" box (pp 80 – 82). Question 20 on Schedule B also asks for disclosure of unliquidated claims, including tax refunds, to which Porteous similarly checked "**none**." The Schedules contain a declaration within the jurat (SC 111) that provides,

> I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 18 sheets plus the summary page, and that they are true and correct to the best of my knowledge, information, and belief.

The jurat was signed by Porteous and his wife on April 9, 2001. In fact, Porteous knew he would be receiving a tax refund in excess of $4,000 when he went into

bankruptcy. On March 23, 2001, just five days before the original Chapter 13 filing of March 28, 2001, Judge Porteous and Mrs. Porteous filed for a federal tax refund on their 2000 1040 tax return in the amount of **$4,143.72** (EX 24; SC 600). Shortly thereafter, that exact amount was deposited into Porteous's Bank One checking account (EX 25) on April 13, 2001, or just four days after the filing of the Amended Chapter 13 Petition on April 9, 2001. Not only was this tax refund concealed from the Bankruptcy Court, but attorney Claude Lightfoot testified on direct examination to Judge Porteous that he had no recollection of discussing the refund with Porteous (p. 437)[12] and that he (Lightfoot) would never have checked off the box (indicating no refund) had he been advised by the client that a refund was expected (pp. 450 – 451).

Porteous testified that the concealment of the tax refund from his bankruptcy schedule, which was signed under penalty of perjury, was an unintentional oversight. What is certain is that if the existence of the refund was an oversight, that oversight was never rectified. The refund was never reported to the Chapter 13 trustee or made part of the bankruptcy estate.

Porteous admitted that Schedule B – Personal Property, Question 2 (from Ex. 1, SC 95), requested information on all "checking, savings or other financial

[12] Lightfoot's testimony seems at odds with Porteous's statement at the hearing that he (Porteous) discussed the receipt of the tax refund with Lightfoot, and that Lightfoot advised him to put the refund into his (Porteous') account (pp. 83 – 84).

accounts," but that he only listed a Bank One checking account valued at $100. (pp. 79 – 80; 85; 94 – 95). In fact, Porteous's Bank One monthly statement (Ex. 27; SC 606) showed a beginning balance of $559.07 as of March 23, 2001 (only five days before the filing of bankruptcy). Porteous also admitted that he owned a Fidelity money market account (Ex. 28; SC 611) that was not listed on his bankruptcy schedules. On March 28, 2001 – the date Porteous filed Chapter 13 – his concealed Fidelity money market account had a balance of $283.42 according to his Fidelity bank statement of April 20, 2001 (Ex. 28; SC 611). That bank statement also showed that Porteous's average balance for the previous 30 days was $320.29. Porteous testified that he thought he told his lawyer about the existence of the Fidelity account (p. 87), but Lightfoot testified that he was never told of other bank accounts (p. 449).

The Special Committee concludes that Porteous intentionally failed to disclose all his nonexempt property on the Schedules while undervaluing other property. His tax return requesting a refund in excess of $4,000 was signed days before bankruptcy. When that omission is considered with his failure to schedule the Fidelity money market account, and his failure to properly value the Bank One account, a pattern of misrepresentation becomes apparent. Each of these acts violated his oath on the "Declaration Concerning Debtor's Schedules" which he signed under penalty of perjury (from Ex. 1; SC 111).

The same pattern of misstatements is evident in the "Statement of Financial Affairs" portion of the Amended Bankruptcy Petition (Ex. 1; SC 112). In Question 3., "Payments to creditors," (Ex. 1; SC 112), debtors were to list all payments on loans and other debts aggregating more than $600 made within 90 days of filing bankruptcy. Instead of accurately identifying creditors, Porteous's response to Question 3. was "Normal Installments." In fact, the March 2001 monthly statement for the previously mentioned Fleet credit card (Ex. 29; SC 618) shows a balance of **$1,088.41**, due April 15, 2001. The following month's statement from Fleet (Ex. 29; SC 620) shows a payment in full of **$1,088.41** being *posted* by Fleet on March 29, 2001 – or one day after the filing of Chapter 13 bankruptcy. The source of that payment was a check from the personal checking account of Porteous's long-time secretary, Rhonda Danos. She wrote a check on her Hibernia Bank account (Ex. 29; SC 619) that was made payable to Fleet on March 23, 2001 (five days before the filing of bankruptcy), in the amount of **$1,088.41**. The notation on the bottom of the check names "Carmella Porteous" and the account number of the above-referenced Fleet credit card account.

Porteous admitted that Danos paid Fleet via a personal check five days prior to his filing bankruptcy, but he could not recall a reason (p. 97). Rhonda Danos later testified that Judge Porteous asked her to pay the bill, as she never spoke with Carmella Porteous about paying her bills (pp 401-403). This payment by Danos of

the Porteous Fleet credit card had several consequences. First, it was a preferred payment to an unsecured creditor (Fleet). Second, since Fleet was not listed as an unsecured creditor, it also was not listed as a creditor to whom more than $600 was owed within 90 days of filing bankruptcy. Third, the omission violated the jurat to the Statement of Financial Affairs, which was signed and dated by the debtors on April 9, 2001 (from Ex. 1; SC 116) provided,

> I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and they are true and correct.

Finally, the sustained post-bankruptcy activity in the Fleet credit card account demonstrates that Porteous or his wife was continuing to incur credit without the required approval of the trustee or bankruptcy court.

Another preferred payment that Judge Porteous made occurred in connection with two $1000.00 markers that Porteous took out February 27, 2001, from Grand Casino in Gulfport, Mississippi. Grand Casino records (EX 49; SC 1105) reflect that the two markers were taken out on February 27, 2001 and were dropped on, i.e., negotiated against, Porteous's account March 24, 2001. Grand Casino records (EX 49; SC 1131) reflect that Judge Porteous requested on March 27, 2001 (the day before Porteous filed for bankruptcy) that his account be changed to a 30 day hold, and that "he prefers to pick up [the markers] – do not deposit." This same

record reflects that the customer (Porteous) called on April 2, 2001 and asked that the fees be waived because the markers were dropped too soon and also to the wrong account number. Judge Porteous did not disclose this preferred payment in the bankruptcy schedules he filed with his Amended Petition on April 9, 2001.

Rhonda Danos was questioned about a $1,000 check she wrote to the Beau Rivage Casino in Biloxi, Mississippi, dated April 30, 2001. She identified it (Ex. 90; SC 403) as the $1000 check she had written to that casino on behalf of Porteous, and admitted that the check had her notation on it as payment for Judge Porteous (p. 402). She explained that Porteous asked her to pay for a marker he had outstanding since she was going to the Beau Rivage (pp. 402-404). Beau Rivage records (Ex. 51; SC 1197) reflect that Porteous had a balance due of $1000 after a two day trip to the casino on April 7 to April 8, 2001. It is important to note that April 8th was just one day before Porteous filed his Amended Chapter 13 Bankruptcy Petition. The casino record (Ex. 51 SC 1197) reflects that a $1000 payment was made at the cashier's cage by personal check on May 4, 2001. This transaction is yet another example of Porteous making an improper preferred payment to a creditor, and also was not reported on the bankruptcy schedules or Statement of Financial Affairs.

Porteous testified that he did not recall having gambling losses exceeding $12,700 during the one year prior to the commencement of filing bankruptcy, but

also did not dispute that fact. He also testified that he could have incorrectly answered "none" to Question 8 on the Statement of Financial Affairs, where debtors were directed to "list all losses from . . . gambling within one year immediately preceding the commencement of this case . . . " (from Ex.1, SC 113). In fact, Agent Wayne Horner testified that he had compiled a summary chart (Ex. 30; SC 621) that listed all of Porteous's losses and winnings for the period of one year prior to the bankruptcy filing of March 28, 2001, and the total gross losses were actually $12,895.35, and the total gross winnings were $5,312.15 (pp. 317-318), resulting in substantial unreported losses.

Judge Greendyke testified that had he been aware of the preferred payments, the omitted tax refund, the understated bank account balances, and the false names on the petition, he would not have signed the confirmation order and would have sua sponte objected to confirming a plan on the basis of good faith (p. 385). Judge Greendyke also testified that his Confirmation Order forbade the debtor from acquiring new debt and that the bankruptcy schedules were signed under penalty of perjury (p. 381).

FBI Financial Analyst Gerald Fink testified (pp. 365-374) that he performed an analysis of Porteous's financial affairs for the years leading up to the bankruptcy in March 2001, and for the period after bankruptcy in years 2001 and 2002. Mr. Fink testified that Porteous understated his income and overstated his

expenses on the bankruptcy schedules he provided to the Chapter 13 Trustee. Fink provided a summary exhibit (Ex. 72) and a detailed explanation of how Porteous had $24,825 available in 2001, over and above what he reported on his bankruptcy schedules, that should have gone to creditors. He provided another summary exhibit (Ex. 73) and a detailed explanation of how Porteous had $36,000 available in 2002, over and above what he reported in his bankruptcy schedules that also should have gone to creditors.

Porteous's bankruptcy lawyer, Claude Lightfoot, testified that Porteous never told him about the tax refund he applied for, or the actual receipt of that tax refund. Similarly, Lightfoot testified he had no knowledge of Porteous's preferred payments to Fleet credit card and to the casinos. Lightfoot testified that he was never aware of Porteous's casino debts or prior gambling losses, and that he was only aware of a single bank account in which Porteous told him had a balance of $100.

Porteous's misconduct leading up to and during the course of his Chapter 13 bankruptcy was not limited to perjury and ethical violations, but also constituted bankruptcy fraud. The evidence conclusively shows that he knowingly concealed property (or undervalued property) from his lawyer, the trustee and the Court. As a result, there were fewer reported assets in the bankruptcy plan for unsecured creditors, while other creditors were being preferred for payment. His pattern of

preferences, omissions and undervaluing assets was deceitful, in bad faith and acted as a fraud upon the Court and most of the unsecured creditors in violation of 18 U.S.C. §152(a). Similarly, his false declarations were not the result of a series of honest mistakes, but an attempt to continue a lifestyle he was no longer entitled to live while under the protection of bankruptcy laws. These false declarations were in violation of 18 U.S.C. §152(3).

2. BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Porteous had a longstanding relationship with Regions Bank in New Orleans. The bank's former president, Edward "Buddy" Butler (now retired), was a friend or social acquaintance of Porteous for approximately 20 years (p. 112; 274, 289). Butler had a history of providing Porteous with small, unsecured personal bank loans (for tuition and household expenses) in the range of $2,500 to $5,000 (p. 275). Until 2001, these loans had always been paid back (p. 288).

Butler testified that the difference between an unsecured loan and a secured loan is that a secured loan has collateral securing the debt, while an unsecured loan only has the personal signature endorsement of the customer (p. 275). Butler also testified that the reason to collateralize a loan depends on the size of the loan and the creditworthiness of the customer. He stated the bank is in a much better position if it has collateral (pp. 275 – 276)

Porteous contacted Butler for a $5,000 unsecured loan from Regions Bank. On January 27, 2000, Porteous signed an unsecured promissory note for the $5,000 loan that would mature on July 24, 2000. (Ex. 4; SC 277; 279). The loan documents indicate that the stated purpose of the loan was for "TUITION FOR SON" (Ex. 4; SC 274). As part of the loan package, Porteous signed a "Financial Condition" statement on January 17, 2000, that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

(Ex. 4; SC 274). Porteous also checked off the word "NO" in a box on the loan form that asked, "In the last ten years, have you been bankrupt or are you in the process of filing bankruptcy?" (Ex. 4; SC276).

On or about July 24, 2000, Porteous again contacted Butler to get the $5,000 promissory note extended or renewed for another six month term, maturing on January 17, 2001. (Ex. 4; SC 279 – 282).

Porteous admitted that bankruptcy attorney Claude Lightfoot was his lawyer by November/December, 2000 (p. 60). In fact, Lightfoot had been engaged to represent Porteous by the summer of 2000 (pp. 442 – 445). Porteous also admitted

that Lightfoot sent "workout" letters to unsecured creditors on December 21, 2000, that read,

> Dear Judge and Mrs. Porteous,
>
> I enclose a copy of the letters and one copy of the attachments. I included with each that I have sent to all of the unsecured creditors, ***with the exception of Regions Bank which we wanted to exclude,*** proposing the workout of the debts to each by settlement and release as opposed to the filing of bankruptcy (italics and boldface added).

(Ex. 5; SC 296).

On or about January 17, 2001, Porteous again contacted Butler to get the same $5,000 promissory note extended or renewed a second time for another six month term (p. 283). The date of the second renewal on January 17, 2001, followed the Lightfoot "workout" letter by 27 days. The January 17th loan renewal was slightly more than two months prior to Porteous filing for bankruptcy.

When filling out the paperwork for the second extension/renewal of the $5,000 promissory note, Porteous again checked off the "NO" box to the question, "In the last ten years, have you been bankrupt ***or are you in the process of filing bankruptcy?*** (italics and boldface added) (from Ex. 1; SC 290). Porteous also signed the "Financial Condition" statement on January 17th that provided,

> By signing this authorization, I represent and warrant to lender that the information provided above is true and correct and that there has been no material adverse change in my financial condition as disclosed in my most recent financial statement to lender.

Porteous defrauded and made false statements to Regions Bank by failing to disclose his deteriorating financial condition to Butler or anyone else at the bank. Porteous admitted that on January 17, 2001, when he signed the second renewal/extension of the promissory note, Regions Bank had no way of knowing he was discussing "workout" and bankruptcy options with attorney Lightfoot (pp. 111 – 112). Porteous admitted that neither Butler nor anyone else at the bank asked him for collateral to secure the note before approving it on January 17, 2001 (p. 112). As a consequence of this omission, Regions Bank failed to take steps to collateralize the loan. Ultimately, Regions Bank was listed among the unsecured creditors and was eligible for only 34.55 percent of its loan in Chapter 13, or $1,782.43 (per the Chapter 13 Trustee's Final Report and Account, dated May 18, 2004) (from Ex. 1; SC 27).

There is no question that by December 21, 2000, Porteous was considering bankruptcy, and no question that his financial condition had adversely changed since he had received the first renewal/extension of the $5,000 note in July 2000. First, the Lightfoot "workout" letter of December 21st twice references the

possibility of Porteous filing bankruptcy (from Ex. 1; SC 296, 297). Second, the "workout" letter listed $182,330.23 in unsecured credit card debt (from Ex. 1; SC 298). Common experience teaches that credit card interest compounds daily, and with the passing of each day Porteous's financial condition was getting worse. Third, the "workout" letter only listed thirteen credit cards, while Schedule F to the Amended Bankruptcy Petition, filed several months later on April 9, 2001, listed fifteen credit cards with unsecured debt totaling $191,246.73 (exclusive of the Regions Bank promissory note) (from Ex. 1; SC 102 –105). Porteous was in a downward financial spiral that existed well before January 17, 2001, yet he consciously failed to tell his friend "Buddy" Butler and Regions Bank about the severity of his situation (p. 112).

Butler admitted that he had never seen the Lightfoot "workout" letter of December 21, 2000, prior to testifying in court before the Special Committee (pp. 280 – 282). Butler stated that he had no knowledge of any adverse change in Porteous's financial condition as of January 17, 2001 (p. 284). Butler admitted that had he known in advance of Porteous's worsening financial condition, engagement of bankruptcy counsel and mailing of the "workout" letters, he would have followed his bank's loan procedures and would have tried to obtain collateral to secure the loan in order to improve the bank's financial position in the event of a bankruptcy (pp. 287; 291 – 292). When asked about other creditors being paid in

full as preferred creditors, Butler stated "well, I think I would have . . . I think we would have been upset if someone else had gotten paid in full, a hundred percent, and we had been partially paid or not paid at all."

Lightfoot testified that had Regions Bank known of the true financial situation of Porteous in January, 2001, it would have concluded that there was a material change in his financial condition (436-456).

In his testimony, Porteous absurdly suggested a "good faith" type defense in purposely excluding Regions Bank from the December 21, 2000 "workout" in order to benefit the bank. He testified that it was his desire, to the extent possible, "to try and pay Buddy back all of his money" (p. 159), while consciously deciding "in the workout agreements not to include the bank . . ." (p. 159). Porteous testified that the reason for excluding Regions Bank from the "workout" letter was to attempt to work out a solution with the other unsecured creditors in order to pay back Regions Bank 100 percent (p. 288). Stated another way, it was Porteous's plan to make the bank a preferred creditor by making it whole to the exclusion of the other unsecured creditors (p. 289). But it is illogical to suggest that Regions Bank was benefited by being kept in the dark, thus depriving it of the opportunity to collateralize Porteous's note before renewing same in January 2001.

Because Porteous made false statements on his January 2001 loan application, he committed bank fraud under 18 U.S.C. §1344, and made a false

statement on a loan application under 18 U.S.C. §1014. He also violated various judicial canons of ethics in the process.

3. RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

Porteous has a history of accepting cash, gifts and other forms of remuneration from individuals – mostly his lawyer friends – while sitting as a judge on the state and federal benches. These friends include Jacob "Jake" Amato, Warren A. "Chip" Forstall, Jr., Robert G. Creely, Don C. Gardner and Leonard L. "Lenny" Levenson.

A. The Creely & Amato Cash Infusions

Porteous admitted receiving cash from Jacob Amato, Robert Creely and/or their law firm, Creely & Amato, from the time he was a state judge, and continuing beyond the time he took the federal bench, but he could not recall how much he has received from them over the years (p. 119). The recollections of Creely and Amato were somewhat better. Creely testified that he started giving Porteous cash when Porteous was sitting as a state court judge. The money was ostensibly for things that Porteous needed in his personal life, like tuition expense payments (p. 199). Creely testified that Porteous started asking him for cash while Creely was a partner in the Creely & Amato law firm (p. 200). Creely admitted that when Porteous would ask for cash, the routine was for Creely and Amato to "take a draw" from the firm, i.e., they would go to the law firm bookkeeper, and each

would get a check in the same amount, and each would then cash their respective checks before turning over the money to Porteous (pp. 200 – 201). Creely testified that only cash, not checks, was given to Porteous (p. 201). Creely estimated that he and Amato gave Porteous no less than $10,000 cash over time (p. 201) and there was no expectation of Porteous ever paying the money back, i.e., the money was a gift (p. 202).

Amato's recollection of giving cash to Porteous differs from Creely's as to when the payments commenced as well as other details. However, Amato also recalls that he and Creely gave Porteous about $10,000 to $20,000 over a period of time (pp. 239, 247).

Porteous initially testified that he never considered the cash he received from Amato or Creely (or their firm) to be income; it was either a loan or a gift (p. 119). Porteous then admitted that since he never paid back the cash, any loan would become income to him unless it was forgiven as a gift (p. 119). Porteous then admitted that he neither reported the cash on his income tax return as income (p. 120), nor on his judicial Financial Disclosure Reports as gifts during years 1994 – 1999 (from Ex. 3, SC 215 – 238), despite the fact that Porteous certified each year's Financial Disclosure Report as being true and accurate.

B. <u>The Curatorship Scheme</u>

The manner and means of Amato, Creely and their law firm supplying Porteous with cash evolved over the years. Creely testified there came a time when Porteous was on the state bench that "we [Creely and Amato] just couldn't keep giving him money." (pp. 202 – 203). Porteous solved that problem by sending "curatorship" cases, or simply "curatorships" over to the Creely & Amato law firm, then exacted a kickback of sorts in cash. Creely explained that a curator "is a court appointed attorney that the . . . district court, Jefferson Parish . . . would appoint an attorney to represent an absentee defendant." (p. 204). These curatorships came to the firm "often," (p. 204), and each had a set fee of $175.00 per defendant plus expenses (p. 205). Creely testified that Porteous would then request back a "good portion" of the curatorship fees that were paid by the court, which he estimated to be more than 50 percent of the fees (pp. 206 – 209). Creely also characterized the curatorship arrangement as a method for him to give Porteous cash "without coming out of my pocket." (pp. 208 – 209). Although the curatorship fees were paid to Creely & Amato by the state district court, the sources of the money were the lending institutions that had filed the foreclosure lawsuits and had to post the curatorships (p. 210). On cross-examination by Porteous, Creely would not characterize the curatorships as "kickbacks," but instead characterized the arrangement as "a continuation of what had gone on the years or year before that, that you wanted money." (p. 229). When Porteous

attempted to get Creely to agree that the purpose of the curatorships he sent to the firm was to "help defray some" of the costs of employing a young lawyer named Gary Raphael,[13] Creely refused to agree with that characterization. (pp. 232 – 233).

Amato's recollection of the curatorship fee arrangement is similar to Creely's, except Amato does not recall Porteous ever asking for cash prior to the curator arrangement (p. 237). Amato testified that he learned of the curatorship scheme from Creely, and while he did not like the idea, he felt it was something they had to do (p. 239). Amato did not recall himself ever giving Porteous cash back from curatorships, as the payments were made through Creely as the conduit (p. 239).

C. <u>The Fishing Trip Request for Cash</u>

Porteous testified that he could not recall asking Amato for thousands of dollars during a fishing trip on a friend's boat around May/June 1999 to help pay for Timmy Porteous's wedding later that summer (p. 135). However, Porteous did admit sending Rhonda Danos to the Creely & Amato law firm during that time period to pick up an envelope with cash inside. Porteous did not dispute that the amount of cash could have been $2,000 (pp. 136 – 137). Porteous characterized this money as a loan (p. 137), but admitted that he never paid it back (p. 138). Porteous also admitted that when he filed for bankruptcy in 2001, he did not list

[13] Porteous suggested that Mr. Raphael was hired by Creely & Amato on his (Porteous') recommendation, but had not worked out to Creely's satisfaction.

the "loan" as an outstanding debt (p. 138). Porteous also admitted since the loan was never paid back, it became income; but that he never reported that "income" on his federal tax return and never reported the income as "other income" on his Financial Disclosure Report for calendar year 1999 (Ex. 3, SC 235 – 238) (p. 138). (If the "loan" was a "gift," Porteous did not list it in the gift section of that Financial Disclosure Report (SC 236).)

Creely and Amato have better recollections of the fishing trip request. Amato testified that he was fishing with Porteous around the time that one of Porteous's sons was getting married or had just been married (p. 240). Porteous became emotional about being "set back" financially for the wedding, and said that he needed help (p. 240). Within two or three days of that request, Amato cashed a check – or he and Creely each cashed checks – and then Amato handed Porteous $2,000 or $3,000 in cash (pp. 241, 244).

Creely recalls the incident differently, assuming it was the same incident. Creely testified that Amato told him that he (Amato) had been on an overnight fishing trip with Porteous in the May/June time frame. Porteous became emotional and asked Amato for financial help for assistance with the tuition payment for one of his (Porteous's) children (pp. 211 – 212). Creely and Amato agreed to take equal $1,000 draws from the firm and then make the cash available to Porteous (p. 213). Creely then testified that Rhonda Danos came to the firm to pick up an

envelope with the cash inside, and that he and Amato thereafter expressed their displeasure to Porteous for inappropriately sending over his secretary over to pick up money; that it was too "blatant." (pp. 214 – 215).

Amato testified that he believes the $2,000 or $3,000 that he gave Porteous may have been a different incident from what Creely recalled (p. 244), and was not even certain whether he told Creely about it or got a contribution from Creely (p. 244). If Amato is correct, and the incidents are separate, then in the May/June 2001 time period Porteous received somewhere between $4,000 - $5,000 from Creely and/or Amato and/or the Creely & Amato law firm.

As is discussed elsewhere in this Report, the cash payment(s) ranging from $4,000 to $5,000 that Porteous received in May/June 1999 from Creely and/or Amato and/or the Creely & Amato law firm occurred at a time when Amato was representing a party in the *Liljeberg* case, a hotly contested matter pending before Porteous.

D. <u>The Las Vegas Bachelor Party Trip</u>

In May of 1999, Porteous's son Timmy was having a three day bachelor party in Las Vegas. Among those who attended were Porteous's lawyer friends Creely and Don Gardner. Porteous admitted that he used an airline ticket provided by Warren A. "Chip" Forstall for his (Porteous's) transportation to his son's

bachelor party in Las Vegas in May 1999 (p. 139).[14] Porteous admitted the hotel room he stayed in at Caesar's Palace was paid for by Mr. Creely, and the value of that lodging exceeded $250 (p. 140). Porteous also admitted that he never reported that gift on his Financial Disclosure Report for calendar year 1999 (p. 140). Porteous admitted that the food he ate on that trip was also paid for by Creely "and maybe some other people . . ." (p. 141), but the value of the meals was not reported on his Financial Disclosure Report for calendar year 1999 (p. 141). Porteous admitted that the *Liljeberg* case was pending before him in May 1999 when he went to Las Vegas accompanied by Creely, Gardner and others (pp. 154 – 156). While Creely was not an attorney of record in *Liljeberg*, his partner Jacob Amato was a counsel for Liljeberg. Gardner was also an attorney in the *Liljeberg* case as a counsel for the another party, Tenant/Lifemark. (Ex. 82). Creely admitted attending the Las Vegas bachelor party with Porteous in May 1999, and did not dispute paying for Porteous's lodging (p. 219).

E. <u>Unexplained Cash Balances and Transactions</u>

FBI Financial Analyst Gerald Fink testified that he examined the subpoenaed bank records of Porteous and secretary Rhonda Danos. Fink testified that Porteous had cash deposits (over and above his direct deposit judicial salary) into his bank accounts of $80,429.08 for the years 1998, 1999 and 2000 (Ex. 94)

[14] It is important to note that the value of the airline ticket originally given to Porteous by Forstall is not reflected in any Financial Disclosure Report for calendar years 1994 through 1999 inclusive. See EX. 3.

(pp. 354 – 355). Fink testified that Rhonda Danos had cash deposits (over and above her direct deposit federal salary) into her account of $49,120.77 in 1999, and $10,907.03 in 2000 (Ex. 93) (pp. 353-354).

Since Porteous, Robert Creely, Joseph Amato, and Don Gardner all testified that there was cash given to Porteous, but few could remember with much certainty when cash was given or the amounts, Fink's testimony is probative in confirming that unexplained cash was deposited into the accounts of Porteous and Danos.

Danos testified that in 1999 and 2000 she was paying Porteous's bills and that he would reimburse her for those payments. When asked why the checks Porteous wrote to reimburse her did not match the total she had spent paying his bills, she testified that the balance was paid in cash (401-419).

Fink analyzed Rhonda Danos' bank account and produced summary exhibits (Ex. 91 and Ex. 92) showing that Danos paid $41,176.97 for Porteous's bills in 1999 and 2000. She was reimbursed by Porteous's checks in the amount of $32,555 in 1999 and 2000, thus leaving a shortfall of approximately $9000. Danos' take home pay as Porteous's secretary in 1999 was approximately $29,000 (pp 350-354).

4. FINANCIAL DISCLOSURE REPORT VIOLATIONS

Article III and other federal judges have statutory financial disclosure reporting obligations. Title 5, United States Code Appendix, §§ 101 et seq., the

Ethics in Government Act of 1978, or, the "Act," requires judges to file annual financial disclosure reports as of May 15 of the succeeding year.

Section 101 (f) (11) of the Act includes a "judicial officer" within its purview.

Section 102(a) (1) (A) of the Act provides in pertinent part, that each report filed -

> "shall include a full and complete statement with respect to . . . the source, type, and amount or value of income . . . from any source (other than from current employment by the United States Government) received during the preceding calendar year, aggregating $200 or more in value .."

Section 102 (a) (2) (A) of the Act provides in pertinent part that for each report filed there shall be disclosure of -

> "the identity of the source, a brief description, and the value of all gifts aggregating more than . . . $250 . . . received from any source other than a relative of the reporting individual during the preceding calendar year, except that any food, lodging, or entertainment received as personal hospitality of an individual need not be reported, and any gift with a fair market value of

> $100 or less, as adjusted at the same time and by the same percentage as the minimal value is adjusted, need not be aggregated for purposes of this subparagraph.

Section 109 (10) of the Act defines "judicial officer" to include –

> "the . . . United States district courts . . . and any court created by Act of Congress, the judges of which are entitled to hold office during good behavior."

Porteous is and has been statutory obligated to file complete, true and accurate annual financial disclosures since assuming Article III status in 1994.

Porteous acknowledged awareness of Canon 5(C)(1)'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge; Canon 5(C)(4)'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; as well as a duty to endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per Canon 6(C) (p. 45). Indeed, Porteous did report as gifts two hunting trips on his

Financial Disclosure Reports for calendar years 2004 (from Ex. 3; SC261) and 2005 (from Ex. 3; SC 267). But, he never reported any gifts prior to 2004.

Every one of Porteous's judicial Financial Disclosure Reports for calendar years 1994 through 2005 (Ex. 3) contain a jurat that reads as follows,

> I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

Below the signature line for the subscribing judge is a cautionary note that provides,

> ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

The evidence detailed in the preceding sections of this report is incorporated herein by reference. That evidence includes the testimonial admissions by Porteous, as well as the testimonial admissions of Creely and Amato, of cash payments made to Porteous following the fishing trip of May/June 1999 (during the pendency of the *Liljeberg* case). Porteous received from $4,000

to $5,000 from Creely and/or Amato and/or the law firm of Creely & Amato. Had that cash been a loan, it should have been reported in the "LIABILITIES" section of the Financial Disclosure Report for Calendar Year 1999 (from Ex. 3; SC 236). Had that cash been a gift, it should have been reported in the "GIFTS" section of that same report. Had that cash been a loan that was made with expectation of repayment, and had not been repaid, then it would have become income and should have been reported in the "NON-INVESTMENT INCOME" section of that same report (and his federal 1040 income tax return). If Porteous could have divined another characterization for the cash that he surreptitiously received, he had the opportunity to report it in the catchall section of the report titled, "ADDITIONAL INFORMATION OR EXPLANATIONS." If Porteous needed advice from the Administrative Office for United States Courts or the Committee on the Code of Conduct on how or whether to report this cash, he could have requested an advisory opinion, but did not do so (p. 40).

Similarly, Porteous did not disclose the gifts he received leading up to and including his son's bachelor party in Las Vegas during May 1999. The airline ticket that was originally purchased by Warren Forstall and given to Porteous was not listed; the cost of the hotel room for the three-day stay courtesy of Robert Creely was not listed. The cost of the meals provided by any of the other hosts, including Don Gardner, was not listed. Anyone who might have examined

Porteous's Financial Disclosure Report for Calendar Year 1999 would have been ignorant that Porteous was treated to a three day sojourn in Las Vegas.

When Porteous signed the Financial Disclosure Report for Calendar Year 1999 on May 5, 2000, and certified that it was "accurate, true, and complete" to the best of his knowledge, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

Porteous's Financial Disclosure Report For Calendar Year 2000 suffers from other, but equally serious infirmities. Porteous signed and certified this official government report on May 10, 2001 (from Ex. 3; SC 242).

It should be remembered that Calendar year 2000 is the year immediately before Porteous filed Chapter 13 bankruptcy. As mentioned elsewhere in this report, Porteous was in a downward financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy when Lightfoot sent out the "workout" letter to unsecured creditors on December 21, 2000 (Ex. 5; SC 296). The "workout" letter listed thirteen separate credit card companies with balances ranging from $5,349.47 on the low end (First USA Bank) to $28,708.98 on the high end (MBNA America), for total liabilities of $182,330.23. When Porteous filed his Amended Bankruptcy Petition on April 9,

2001, he listed fifteen separate credit cards (excluding his debt to Regions Bank) with total liabilities of $191,246.73 (from Ex. 1; SC 105).

One would therefore have expected Porteous's Financial Disclosure Report For Calendar Year 2000 to reflect the liabilities and debt that he had accrued in the year immediately prior to filing bankruptcy. But such is not the case.

In the "LIABILITIES" section of that report (from Ex. 3; SC240), Porteous listed just two credit cards, a single MBNA account and a single Citibank account, each of which was ascribed a Value Code of "J," which according to the legend at the bottom of the page means $15,000 or less. (SC 240). In other words, Porteous reported that his total liabilities for calendar year 2000 did not exceed $30,000 (pp. 115 – 116).

Porteous admitted that Schedule F of the Amended Bankruptcy Petition (from Ex. 1; SC 102 – 103), filed April 9, 2001 (a month before Porteous signed and certified his Financial Disclosure Report for Calendar Year 2000), listed three separate Citibank credit card accounts in the amounts of $23,987.39, $20,719.58, and $17,711.35. Furthermore, each of these Citibank credit card accounts, standing alone, represented a liability greater than Value Code J ($15,000), and the total of the three Citibank credit cards represented liabilities of $62,418.86 (or at least $47,418.86 more in liability than Porteous reported as owing to Citibank on his certified Financial Disclosure Report).

Porteous also admitted that while he reported a single MBNA credit card liability on his Financial Disclosure Report for 2000, there were in fact three MBNA accounts (pp. 117 – 118).

The credit card accounts appearing on Schedule F of the Amended Bankruptcy Petition (from Ex. 1, SC 104-105) list three separate MBNA credit cards in the amounts of $3,212.80, $30,931.02 and $29,443.71, for total MBNA liabilities of $63,587.53. Only one of the these MBNA accounts was within the "J" range of "$15,000 or less," as reported by Porteous on his Financial Disclosure Report, while the other two MBNA credit cards each represented liabilities greater than $15,000. The total MBNA credit card liability was at least $48,587.53 greater than Porteous reported on his certified Financial Disclosure Report for Calendar Year 2000.

When Porteous was asked to agree that his certification for this report was "false," he replied that "it was not accurate" (p. 118). Whatever words are used to describe his false statements, it is beyond dispute that the report required its subscriber to provide "accurate, true and complete" information. Porteous provided inaccurate, false and incomplete information. In so doing, he not only falsified the report in violation of Canon 6 (C), but also made a false statement to the judicial branch of the government of the United States in violation of 18 U.S.C. §1001.

5. VIOLATIONS OF THE CANONS OF THE CODE OF CONDUCT FOR UNITED STATES JUDGES

The evidence detailed in the preceding sections of this report is incorporated herein by reference.

Judge Porteous was a Louisiana state trial judge for a decade before receiving his commission as a United States District Judge on October 11, 1994. Porteous admitted that as a state judge, he was subject to the strictures of the Louisiana Code of Judicial Conduct ("Louisiana Code") (Ex. 85), and that the Louisiana Code imposed obligations and restrictions upon his conduct and activities similar to its counterpart, the Code of Conduct for United States Judges ("the Code" or "the Canons") (pp. 49–51). This admission is important for two reasons: first, Porteous's state court experience placed him generally on notice of what constituted acceptable or unacceptable judicial conduct; and second, the state court experience precluded him from claiming ignorance of the general rules of judicial conduct which carried over to the federal realm.

Porteous testified that he was familiar with the July 1997 booklet published by the Administrative Office of the United States Courts, *Getting Started As A Federal Judge*, and (p. 36 / Ex. 80 for identification). During questioning about the substance of that booklet, Porteous was asked whether he agreed with certain of its instructions. For example, Porteous agreed that new judges should review the ethical guidelines set forth in the Code of Conduct. He agreed that a judge has

a continuing obligation to examine his/her personal/financial interests and those of the family (p. 38). He agreed that federal judges must be vigilant when continuing relationships with former colleagues (p. 39). He agreed that under Canon 3, judges are required to disqualify themselves in proceedings where their impartiality might reasonably be questioned (p. 39). He agreed that under Canon 2A, judges must freely and willingly accept restrictions on their personal conduct and activities (p. 39). He admitted that he was familiar with the Code of Conduct for United States Judges (p. 40 / Ex. 18).

Porteous admitted that he never asked for an ethical advisory opinion from the Committee on the Code of Conduct (p. 40).

Porteous admitted familiarity with **Canon 1**, which requires judges to uphold the integrity and independence of the judiciary (p. 40). He agreed that judges should comply with the law as well as the provisions of the Code (of Conduct) (p. 41).

Porteous agreed with **Canon 2** that a judge should respect and comply with the law (p. 41). He agreed with **Canon 2A** that judges must accept certain restrictions in their personal lives after taking the federal bench, and that actual improprieties include violations of law as well as court rules (pp. 41 – 42).

Porteous acknowledged familiarity with **Canon 3(C)**'s statement that a judge shall disqualify himself in a proceeding where his partiality might reasonably

be questioned, or in the alternative under **Canon 3(D)**, that the judge may disclose the basis of disqualification to the parties (42 – 43).

Porteous acknowledged awareness of **Canon 5(C)(1)**'s proscription against a judge's financial and business dealings that reflect adversely on his impartiality or involve the judge in frequent transactions with lawyers likely to come before the judge, and **Canon 5(C)(4)**'s proscription against a judge soliciting or accepting anything of value from anyone seeking official action or doing business with the court served by that judge; and required that a judge must endeavor to prevent a member of the judge's family from accepting such gifts except to the extent the judge is so allowed by the Judicial Conference gift regulations (pp. 43 – 44).

Porteous acknowledged his awareness of the requirement to report the value of any gift, favor or loan as required by statutes or the Judicial Conference as per **Canon 6(C)** (p. 45).

Of the numerous ethical violations committed by Porteous and detailed elsewhere in this report, arguably none was more egregious than Porteous's misconduct during the *Liljeberg* case.

In Re: Liljeberg Enterprises Inc., et al. v. Lifemark Hospitals, Inc., Case #2:93-cv-01784 was originally filed on June 1, 1993, and assigned to United States District Judge Marcel Livaudais (Ex. 82) (p. 147). After assignments to various other District Judges, the case was eventually reassigned to Porteous on January

16, 1996. This very complicated lawsuit concerned a property rights dispute between the owners of a pharmacy and a hospital.

To explain the context in which Porteous's ethical lapses occurred, a brief chronology of the case, along with the identity of some it its attorneys, is required. Prominent among the many lawyers that appeared in the case were Porteous's long-time friends, Jacob Amato, Don Gardner and Lenny Levenson. Amato and Levenson were on the Liljeberg side, while Gardner was hired by the Lifemark team only 3 months before trial. Notably, none of these three lawyers was considered a regular federal court practitioner. Porteous considered his friend Gardner to be a "divorce lawyer" (pp. 147, 152). Porteous admitted that his friend Jacob "Jake" Amato, elsewhere described as a personal injury lawyer, did not typically try this type of case in federal court (p. 149). Finally, Porteous admitted that Leonard "Lenny" Levenson, described elsewhere as personal injury lawyer, also did not typically try cases in federal court (p. 149). Attorney Joseph Mole, a lead counsel for Lifemark, was not a friend of Porteous (p. 59).

The relevant chronology for the *Liljeberg* case is as follows:

January 16, 1996 – the case is assigned to Porteous (Ex. 82, page 20).

April 4, 1996 - Joseph Mole became an attorney of record for Plaintiff Lifemark. (Ex. 82, page 21).

September 12, 1996 and September 19, 1996 – Leonard Levenson and Jacob Amato, respectively, became attorneys of record for Defendant Liljeberg. (Ex. 82, page 25). These lawyers first appeared 39 months into the case, just nine months after the case was reassigned to Porteous, and less than two months before the case was supposed to go to bench trial on November 4, 1996.

October 2, 1996 - Lifemark filed its motion to recuse Porteous based on Porteous's close relationship with Amato and Levenson (Ex. 19; SC 555) (Ex. 82; page 27).

October 16 or 17, 1996 - Porteous held a hearing on Lifemark's recusal motion, and denied it.

March 11, 1997 - Don Gardner became an attorney of record for Lifemark (Ex. 82; page 37). It is important to note that Gardner made his appearance 45 months into the case, and five months after Porteous ruled against Lifemark in its recusal motion. Joseph Mole testified that he sent a fee agreement letter (Ex. 10) to Don Gardner which had unusual contingencies and different fee levels but guaranteed a fee of at least $100,000 for Gardner. In explaining the fee agreement, Mole stated "I didn't want my client to be made a fool of, and I wanted his loyalty to be a hundred percent to us and not

distracted. I wanted him to be interested in the outcome." (pp. 177-181)

June 16, 1997 – The bench trial commenced before Porteous (Ex. 8; pages 39 – 41)

July 23, 1997 - Porteous took the case under submission.

May 1999 – While the *Liljeberg* case was under submission, Creely, Gardner and others took Porteous to Las Vegas for Timmy Porteous's bachelor party.

May/June 1999 – While the *Liljeberg* case was under submission, Porteous asked Amato for money to help pay for a child-related event (wedding or tuition). Creely recalled that he and Amato each took $1,000 draws from the law firm, placed the cash in an envelope, and Rhonda Danos picked up the cash on behalf of Porteous. Amato recalled directly paying Porteous $2,000 or $3,000 in cash, and believed this was a separate incident from any cash that Rhonda Danos may have picked up in an envelope from the firm.

April 26, 2000 - Porteous rendered findings of facts and conclusions of law (primarily in favor of Liljeberg) (Ex. 82; page 44).

Porteous admitted that it was unusual that three of his friends, who were not considered federal court practitioners, were appearing before him in *Liljeberg*. When asked whether he was concerned or troubled by their collective appearances, he replied, "No, only to the extent that somebody thought they needed to bring somebody else in." (p. 152).

One person who expressed alarm was Joseph Mole. In his Memorandum In Support Of Motion To Recuse, Mole wrote in pertinent part,

> (1) this litigation has a decade-long history; (2) trial in this matter, without a jury is set for **November 4, 1996**; (3) **the Liljebergs already had five long-standing counsel of record when, on September 12, 1996 they added Jacob Amato and Leonard Levenson, two of the Court's closest friends, as additional counsel;** (4) the Liljebergs seek at least $110 million as damages in this extremely complex case, and **they gave Messrs. Levenson and Amato an 11% contingency fee for less than three months involvement;** and (5) the Liljebergs have a documented and clear history of attempting to use political influence and they have accused others of attempting to acquire improper influence over the judiciary. (boldface added).

(from Ex. 19; SC 555-556).

Mole testified that after Amato and Levenson appeared in the lawsuit, he spoke to people in the legal community and in Jefferson Parish politics and his "concerns were substantiated that Jake and Lenny were close to Judge Porteous and that there was a risk that their presence in the case would be a problem for my client." (p. 168).

Porteous totally disregarded his ethical obligations. For example, he should have advised the parties of his financial relationship with Amato and the Creely & Amato law firm as soon as the recusal motion was filed. He should have granted the motion to recuse or given the parties the choice of keeping him as trial judge.

Porteous admitted that he did not disclose to any party in *Liljeberg* that Amato (and his partner Creely) had given him money in the past (p. 152). Amato also admitted that he never disclosed to Lifemark that he had given money to Porteous (pp. 245 – 246).

Mole testified that his client insisted he find another lawyer to add to his team that was close to Porteous in order to "level the playing field," and ultimately Mole was directed to Gardner (p. 174). Gardner and Porteous are still close friends, and Porteous is the godfather to Gardner's daughter (p. 154). Mole felt that having close friends on both sides of the lawsuit would make it more difficult for Porteous to (unfairly) decide the lawsuit (p. 186). Mole testified that he was unaware that Gardner accompanied Porteous to Las Vegas (for the bachelor party)

while the case was under advisement, and was troubled "with the whole system that allows that to happen" (p. 194).

There is nothing in the *Liljeberg* record to suggest that Porteous ever disclosed the closeness of his relationship with Levenson. In his testimony before the grand jury on April 7, 2006, Levenson admitted that he provided travel or living expenses to one of Porteous's sons who was serving a Congressional externship in Washington, D.C. (Levenson Grand Jury, p. 65). Levenson also admitted that during the times when he had matters pending before Porteous in federal court, he would continue to take Porteous out to lunch and pay for the meals (Levenson Grand Jury, pp. 33 – 34). Nevertheless, in the Liljeberg reply memorandum to Lifemark's motion to recuse, which Levenson signed, Levenson calls Lifemark's claims "unsubstantiated and cynical innuendos" and "wild speculation" (from Ex. 19; SC 581). Levenson revealed neither the fact that he often took Porteous to lunch or that he had helped subsidize a Washington, D.C. externship for Porteous's son (from Ex. 19; SC 581 - 584).

Mole testified that when he signed the recusal motion in *Liljeberg* (Ex. 19), he was unaware of any financial relationship between Amato and Porteous or between Levenson and Porteous (p. 169). He also testified that prior to ruling on the recusal motion, Porteous never disclosed his receipt of cash from Amato or Levenson (p. 170). The Canons pertinent to Porteous's misconduct surrounding

the recusal motion in *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

Porteous's ethical lapses in the context of the *Liljeberg* recusal incident were compounded by Porteous's failure to disclose to the *Liljeberg* parties his trip to the Las Vegas bachelor party in May 1999 (in which Creely and Gardner participated), and his receipt of $4,000 - $5,000 from Amato and/or Creely and/or the Creely & Amato law firm in the same time period – all of which occurred while the *Liljeberg* case was in submission before him awaiting decision (pp. 154 – 156). (The evidence pertaining to these events is thoroughly covered above, in the section titled "Receipt of Cash, Gifts and Other Forms of Remuneration.") The Canons pertinent to Porteous's receipt of cash during *Liljeberg* and the Las Vegas trip during *Liljeberg* are: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bankruptcy Fraud and Violations of the Order of the Bankruptcy Court," which are incorporated by reference herein, show a flagrant disregard by Porteous of the Chapter 13 requirements, not the least of which was Judge Greendyke's court order to Porteous not to incur more debt. Porteous was generally contemptuous of the restrictions imposed upon him by Chapter 13 bankruptcy. William Heitkamp,

Chapter 13 trustee in the Southern District of Texas, testified that the Chapter 13 system depends upon the good faith of the debtor and the debtor's obligation to report his financial data truly and accurately (p. 399). Porteous did everything he could to show bad faith. He filed a petition under a fictitious name; used a newly obtained Post Office box instead of a residential address; failed to disclose the impending receipt of a tax return; omitted a money market account from the Schedules; undervalued a checking account listed in the Schedules; omitted gambling losses from the Statement of Financial Affairs; preferred certain creditors; understated income and overstated living expenses to the trustee; continued to incur debt through the use of gambling markers; continued to incur debt through the use of an undisclosed credit card; and committed perjury on the jurats of the Schedules and Statement of Financial Affairs. The Canons pertinent to Porteous's conduct leading up to and subsequent to the filing of Chapter 13 bankruptcy and his fraudulent activities include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Receipt of Cash, Gifts and Other Forms of Remuneration," which are incorporated by reference herein, cover a long period of time. An undetermined amount of cash, as well as the curatorship kickback scheme, predate Porteous's

tenure as a federal judge. That Porteous undoubtedly violated the Louisiana Code of Judicial Conduct is relevant to show a common scheme and absence of mistake by Porteous when he continued business as usual after ascending to the federal bench. When Porteous's job changed, his receipt of cash payments from Creely & Amato continued as did the practice of trips and other forms of entertainment from his lawyer friends who sometimes practiced before him. The Canons pertinent to Porteous's receipt of cash, gifts and other forms of remuneration during his tenure as a federal judge, including favors received during *Liljeberg* include: Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C.

The evidence and findings detailed in the section of this report titled, "Bank Fraud Involving a Loan At Regions Bank" are incorporated herein by reference. Porteous's conscious decision to conceal from Regions Bank the adverse changes in his financial condition, while asserting that he intended to benefit the bank, is as disingenuous as it is absurd. The facts support the conclusion that in addition to violating the bank fraud statute and filing false statements on a loan application, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., and Comm. to Canon 2.A.

Another area of ethical violations, also explained above, concerns Porteous knowingly filing false and inaccurate Financial Disclosure Reports. See section

titled "Financial Disclosure Report Violations", which is incorporated herein by reference. Porteous never accounted for the Las Vegas jaunt or the cash ($4,000 - $5,000) he received from Amato and/or Creely and/or the Creely & Amato law firm on his disclosure report for calendar year 1999. In the disclosure report for calendar year 2000, Porteous seriously underreported liabilities by approximately $160,000. In addition to making a false statement when signing the jurats on these disclosure reports, Porteous also violated Canon 1, Comm. to Canon 1, Canon 2.A., Comm. to Canon 2.A., Canon 3 C.(1), Canon 3 D., Canon 5 C, and Comm. to Canon 5 C. and Canon 6(c).

There are two other issues that should be addressed. The first has to do with Porteous's opinion that he properly fulfilled his judicial oath as a federal judge (p. 157). In support of that statement, he testified that, "I've been fair and impartial in every proceeding that comes before me." (p. 157). The lawyers who lost the recusal motion in *Liljeberg* would probably take issue with that statement.

The second issue has to do with Porteous's lack of contrition and almost total denial of judicial misconduct on his part. He testified that, "maybe I have breached a canon now; but I've not violated the laws of this country, and I've not committed any crime." (p. 483). Porteous did not specify which Canon he breached, although there are many from which he could have chosen. He made that statement on October 30, 2007, at the conclusion of his hearing before the

Special Committee. He made that statement after the testimony of a dozen witnesses, most of whom testified in corroboration of the allegations set out in the Charge of Judicial Misconduct. He made that statement after one of those witnesses, G. Thomas Porteous, Jr., made admission after admission in support of the allegations of misconduct as detailed in the Charge.

IV. CONCLUSION

As the foregoing findings of fact and conclusions of law demonstrate, the Special Committee strongly believes that grounds exist for the Judicial Council to refer this matter to the Judicial Conference of the United States, pursuant to 28 U.S.C. Sec. 354(b)(2)(A), because Judge G. Thomas Porteous has engaged in conduct "which might constitute one or more grounds for impeachment under Article II of the Constitution." Such conduct might also constitute grounds for impeachment pursuant to Article III because Judge Porteous has not demonstrated "good behavior" in his violation of laws, ethical standards, and financial disclosure requirements.

The Committee recommends that the Council so certify this matter and, in addition, that pending a ruling by the JCUS, Judge Porteous be removed from his handling or assignment of any cases involving the U. S. Government and, if necessary to the preparation of his defense to these charges, all other cases; and that Judge Porteous be publicly reprimanded for his misconduct. See 28 U.S.C,

Secs. 354(a)(1)(C), (a)(2)(i), and (a)(2)(iii). Judge Porteous should receive a copy of the Committee's report.

The Committee seeks the advice of the Council on the extent to which the order and statement of written reasons be made available to the public under 28 U.S.C. Sec. 360(b); whether the DOJ as "complainant" should receive a copy of the Committee's report pursuant to 28 U.S.C. 360(a)(1); and whether the Council should refer certain witnesses, including Amato and Gardner, to the Louisiana State Bar for professional discipline, notwithstanding their grants of immunity prior to their testimony to the Committee.

The foregoing report is respectfully submitted by the unanimous vote of the three members of the Special Investigatory Committee, as evidenced by their signatures below.

Edith H. Jones, Chief Judge

Jerry E. Smith

Sim Lake, U.S. District Judge*

Date of Signatures: November 19, 2007.

* Signature by permission

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

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DOCKET NO. 07-05-351-0085

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

MEMORANDUM ORDER AND CERTIFICATION

A Special Investigatory Committee was appointed by the Chief Judge pursuant to 28 U.S.C. § 353(a) to investigate a complaint filed on May 18, 2007, by the United States Department of Justice alleging that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts. The Special Investigatory Committee conducted an extensive investigation

culminating in an adversary hearing on October 29 and 30, 2007. Judge Porteous appeared at the hearing and offered motions, oral argument, his own testimony, and the testimony of witnesses in his defense.

Thereafter, on November 20, 2007, the Special Investigatory Committee forwarded to the Judicial Council a comprehensive written Report presenting both the findings of the investigation and the Committee's recommendation for necessary and appropriate action by the Judicial Council. In addition to the Report, hyperlinks to relevant testimony, and two volumes of accompanying exhibits, the Special Investigatory Committee also filed the entire record before it, including grand jury records, business records of certain casinos, bank, and credit card companies, and testimony presented during the adversary hearing.

On November 20, 2007, the Judicial Council informed Judge Porteous that he could examine the Report and re-examine the evidence on which it is based at the headquarters of the Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, and could file a written reply on or before December 4, 2007. Judge Porteous filed a timely Reply to the Report. In addition, on November 21, 2007, Judge Porteous was notified that he could appear at a meeting of the Judicial Council on December 13, 2007.

The Special Investigatory Committee filed its Response to Judge Porteous's Reply on December 10, 2007, and delivered a copy to the Judge.

At a meeting in New Orleans, Louisiana, on December 13, 2007, the Judicial Council of the Fifth Circuit fully considered the Report, Reply, and Response, and the record of proceedings before the Special Investigatory Committee. Judge Porteous appeared before the Council and spoke in his own defense.

By a majority vote, the Council determines that the Report and the record contain substantial evidence supporting the allegations listed in the Special Investigatory Committee Report, including the following:

(a) Judge Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Judge Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Judge Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.

(b) Judge Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.

(c) Judge Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Judge Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial

relationships with at least one counsel for the movant in the case.

(d) Judge Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading because they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

Based on the foregoing, the Judicial Council, by a majority vote, accepts and approves the Report of the Special Investigatory Committee, and the Judicial Council, by a majority vote, determines on the basis of the Complaint, the Report, and the record of the proceedings, that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution for the above-described violations of law and ethical canons.

The Judicial Council further finds by a majority vote that, with respect to the Complaint, and the matters described therein, a certification should be made to the Judicial Conference of the United States in accordance with 28 U.S.C. § 354(b)(2)(A).

ACCORDINGLY, pursuant to 28 U.S.C. § 354(b)(2)(A), the Judicial Council of the Fifth Circuit CERTIFIES to the Judicial Conference of the United States its determination that United States District Judge G. Thomas Porteous, Jr. has engaged in conduct, described above, which might constitute one or more

grounds for impeachment under Article II of the Constitution. Together with such determination, the Judicial Council CERTIFIES to the Judicial Conference the Complaint filed by the United States Department of Justice, supplemented by the Complaint identified by the Chief Judge, and the record of associated proceedings and exhibits received by the Special Investigatory Committee and with the Judicial Council.

The Judicial Council sends forward to the Chief Justice of the United States, as presiding officer of the Judicial Conference: (1) the Complaints; (2) three copies of the Report and Recommendations of the Special Investigatory Committee, Judge Porteous's Reply and the Committee's Response; (3) the record of orders, notices, correspondence and other documents of the Special Investigatory Committee; (4) the record of grand jury proceedings received by the Special Investigatory Committee; (5) the record of the adversary hearing, including exhibits, before the Special Investigatory Committee; and (6) the record of proceedings before the Judicial Council. Item numbers (4) and (5) will be indexed and placed in numbered sealed boxes, and the indices will be forwarded to the Judicial Conference of the United States. The sealed materials will be retained by the Judicial Council of the Fifth Circuit pending shipping instructions from the Judicial Conference of the United States.

The Judicial Council further CERTIFIES that, pursuant to 28 U.S.C. § 354(b)(3), the delivery of copies of this Memorandum Order and Certification will constitute notice to the complainant and to Judge G. Thomas Porteous, Jr. of the action taken under 28 U.S.C. § 354(b)(2)(A).

The Judicial Council further ORDERS that pending a decision by the Judicial Conference of the United States, no bankruptcy cases or appeals or criminal or civil cases to which the United States is a party will be assigned to Judge Porteous, and he may continue his civil docket and administrative duties until it is determined that he must devote his time primarily to his defense.

Pursuant to Rule 16(E) of the Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, materials relating to this complaint "will be made public only as may be ordered by the Judicial Conference [of the United States]."

DONE this 20th day of December, 2007.

FOR THE COUNCIL:

Edith H. Jones

Chief Judge

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

Before: Edith H. Jones, Chief Judge, U. S. Court of Appeals for the Fifth Circuit; Jerry E. Smith, U. S. Circuit Judge; W. Eugene Davis, U. S. Circuit Judge; Jacques L. Wiener, Jr., U. S. Circuit Judge; Rhesa H. Barksdale, U. S. Circuit Judge; Emilio M. Garza, U. S. Circuit Judge; Fortunato P. Benavides, U. S. Circuit Judge; Carl E. Stewart, U. S. Circuit Judge; James L. Dennis, U. S. Circuit Judge; Priscilla R. Owen, U. S. Circuit Judge; Sarah S. Vance, U. S. District Judge; James J. Brady, U. S. District Judge; Tucker L. Melançon, U. S. District Judge; Michael P. Mills, U. S. District Judge; Louis Guirola, Jr., U. S. District Judge; Sam R. Cummings, U. S. District Judge; Hayden Head, U. S. District Judge; Thad Heartfield, U. S. District Judge; Fred Biery, U. S. District Judge

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DOCKET NO. 07-05-351-0085

CONFIDENTIAL

IN RE: Complaint of Judicial Misconduct against United States District Judge G. Thomas Porteous, Jr. under the Judicial Conduct and Disability Act of 1980

DENNIS, Circuit Judge, joined by MELANÇON, HEARTFIELD, and BRADY, District Judges, concurring in part and dissenting in part:

I agree that this judicial council must publicly reprimand Judge Porteous for legal and ethical misconduct during his tenure as a federal judge. But I disagree with the council majority's conclusion that the evidence demonstrates a possible ground for his impeachment and removal from office.

The Framers of the Constitution provided that federal judges, both of the supreme and inferior courts, shall

hold their offices during good behavior and shall be removed from office only upon impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors; that the House of Representatives shall have the sole power of impeachment; that the Senate shall have the sole power to try all impeachments; and that no person shall be convicted without the concurrence of two thirds of the Senate members present. These requirements make removal by impeachment a difficult process, reserved only for the most egregious cases. Thus, the founders intended for judges to have a high degree of independence and to be removable only upon constitutionally specified grounds; they did not intend for judges to serve simply at the pleasure of a majority of the Congress.

Congress has authorized a judicial council to take the initial step towards invoking the impeachment process only when there is a possibility that the foregoing requirements can be met. Accordingly, in fidelity to the Constitution and in the interest of judicial independence, as well as fairness to individual judges, a judicial council should not certify a case for consideration of impeachment unless it has carefully and judiciously weighed the evidence and determined that the judge committed specified acts of possible "Treason, Bribery, or other high Crimes or Misdemeanors." Because the Constitution mandates only this one definition of impeachable conduct, a judicial council may not create its own definition of impeachable offenses, either by

aggregating non-impeachable conduct or otherwise. "Treason, Bribery, or other high Crimes and Misdemeanors" are the only grounds.

A careful and judicious analysis of the evidence in the present case fails to demonstrate that Judge Porteous committed possible treason, bribery, or a high crime or misdemeanor. As an initial matter, it is undisputed that the evidence does not support a finding of any possibility that Judge Porteous committed treason or bribery. Further, the evidence does not support a finding that Judge Porteous committed a possible high crime or high misdemeanor as the terms have been understood by the Framers and ratifiers of the Constitution and by the members of Congress. The constitutional convention proceedings, the ratification history, and the congressional precedents demonstrate that finding a high crime or high misdemeanor requires a showing that the subject judge abused or violated the constitutional judicial power entrusted to him. The evidence here does not support a finding that Judge Porteous possibly abused or violated the federal constitutional judicial power entrusted to him. Instead, the evidence shows that in one case he allowed the appearances of serious improprieties but that he did not commit an actual abuse or violation of the constitutional power entrusted to him. The other offenses and improprieties alleged against Judge Porteous relate to his actions and omissions as a private citizen and his

failure to accurately disclose personal financial data. None of these alleged improprieties amount to an abuse or violation of constitutional judicial powers.

Moreover, neither the special investigating committee nor the judicial council majority performed the difficult tasks of making a careful, judicious analysis of the evidence, determining the definition of "high Crimes and [high] Misdemeanors," applying that constitutional concept to the evidence, and making specific findings that particular acts or omissions by Judge Porteous possibly constituted such impeachable offenses. Consequently, neither the committee nor the council majority actually made a principled determination that any particular act or omission by Judge Porteous constituted a possible high crime or misdemeanor. Instead, the special investigating committee presented a report setting forth, in the manner of a charging document or prosecutorial brief, each ethical and statutory violation that it thought the evidence possibly supported and concluded, without making the constitutional interpretation and analysis called for, that the record might contain one or more grounds for possible impeachment. The judicial council majority, in its Memorandum Order and Certification, simply summarized the special committee report's allegations and findings, determined that there was "substantial evidence" to support them, and determined, without making its own written analysis of the evidence or applying the

constitutional test of high crime or high misdemeanor, that Judge Porteous engaged in conduct which might constitute one or more grounds for impeachment under Article II of the Constitution. Thus, it is evident that the committee and the council majority approved the certification of possible impeachment without reaching an agreement as to what constitutes an impeachable offense or as to which particular high crime or high misdemeanor, if any, was adequately supported by the evidence. Consequently, in my opinion, the council majority fell into error by certifying the existence of possible grounds for impeachment without carefully and judiciously analyzing the evidence, determining the constitutional meaning or definition of "high Crimes and Misdemeanors," applying that definition to a judicious assessment of the evidence, and making specific findings that particular and certain conduct met the definition of "high Crimes and [high] Misdemeanors," *i.e.*, actual abuses and violations of constitutional judicial powers.

Finally, the record in this case does not present a reliable basis upon which to carefully and judiciously assess the evidence of whether specific high crimes or high misdemeanors were possibly committed because Judge Porteous was not afforded all minimal due process rights required by law. Because Judge Porteous's attorney resigned two weeks prior to the special committee hearing and he was denied a continuance to employ new counsel with which to prepare for the hearing, he was denied his

right to counsel in these proceedings. Further, the special investigating committee and judicial council majority determinations were in part based on alleged misconduct by Judge Porteous as a state judge before he was commissioned as a federal judicial officer, which does not constitute grounds for impeachment.

Accordingly, I respectfully suggest that the Judicial Conference should vacate the judicial council majority's order of certification and enter in its place a public reprimand with appropriate precautionary conditions, or, in the alternative, vacate the judicial council's actions and order it to grant Judge Porteous a rehearing and to afford him full rights of minimal due process, including an opportunity to employ an attorney and to adequately prepare for the rehearing.

1.

The Constitution's founders intended for impeachment and removal of a federal officer to be difficult and reserved for the most egregious crimes against the United States, which they named as "Treason, Bribery, or other high Crimes and Misdemeanors." They believed that, if our American system of democracy and justice was to survive, and respect for the rule of law to flourish, judges must be free to interpret and apply the law with neither the fear of retribution nor the influence of favor.[1] The

[1] *See* H.R. Rep. No. 96-1313, at 2 (1980) (*citing* The Federalist Nos. 78 and 79 (Hamilton 502, 512 (Mod Lib.); Montesquieu, 1 Spirit of the Laws 152 (Nugent ed. 1823)).

founders intended that an independent federal judiciary would serve as a check against unconstitutional conduct by executive and legislative officers and as fair and impartial fora for all litigants.[2] Thus, they designed the Constitution's clauses to give federal judges maximum freedom from possible coercion or influence by factions or the other branches of government.

Congress reaffirmed these values in enacting the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980, recognizing that the framers meant for impeachment to be used to rectify only the most egregious cases, those that cannot be remedied by any other means.[3] In explaining that Act, which governs these proceedings, the House of Representatives Committee on the Judiciary stated:

> Impeachment . . . is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at.[4]

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[2] *See, e.g.*, The Federalist Nos. 78 and 79 (Alexander Hamilton).

[3] *Id.* (citing House Hearings before the Subcommittee on Courts, Civil Liberties and the Administration of Justice, (96th Cong. 1st and 2nd Sess.) at 136 (testimony of Peter W. Rodino,Jr.)).

[4] H.R. Rep. No. 96-1313, at 2 (1980) (*quoting* J. Bryce, 1 American Commonwealth 212 (1920)).

Accordingly, Congress provided in the Act[5] that a judicial council must certify a complaint against a judge to the Judicial Conference for consideration of impeachment only when there is a possibility that a judge has committed one of the impeachable crimes named by Article II, section 4, of the Constitution.[6] In the Act, Congress anticipated that the vast majority of complaints would be dismissed by Chief Circuit Judges as frivolous, irrelevant, or as collateral attacks on final court decisions;[7] that a relatively fewer number of complaints would be referred by the Chief Circuit Judge to a special committee of the circuit judicial council; and that only the rare and most egregious case would be certified by judicial councils to the Judicial Conference for referral and consideration of possible impeachment.[8]

This is not one of those rare and egregious cases presenting the possibility of an impeachable offense against the nation. Under a proper application of the Constitution and the Act, Judge Porteous's misconduct is serious and clearly warrants his public reprimand, as

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[5] 28 U.S.C. §§ 354 (b)(2).

[6] "It is the view of the Committee that impeachment is a cumberome and unwieldy process, but this was not unintentional since the framers of the Constitution expressly attempted to provide independence to the federal juriciary." H.R. Rep. No. 96-1313, at 19 (1980).

[7] 28 U.S.C. §§ 354 (a)(2)(A); H.R. Rep. No. 96-1313, at 10 (1980).

[8] *See* H.R. Rep. No. 96-1313, at 2 (1980) ("Over the past 200 years, articles of impeachment have been voted against nine federal judges, four of whom have been convicted and removed from the bench. An additional 46 federal judges have been investigated by the House of Representatives under accusations of unfitness.")(footnote omitted); *see also id.* at 12 (offering examples of the extreme instances in which certification is proper).

well as his willingness to accept and obey strict precautionary conditions for his continuation in office; but it does not amount to a case of possible treason, bribery, or other high crimes or misdemeanors as those terms have been understood by the founders and Congress as the exclusive grounds for impeachment and removal.

2.

The Constitution limits Congress when it makes a choice for or against impeachment to that very particular class of cases: "Treason, Bribery, or other high Crimes and Misdemeanors."[9] Similarly, when judges serve as members of a judicial council in making a choice for or against possible impeachment, they, by virtue of their oaths and the enabling statute, have an obligation of fidelity to the fundamental design of the Constitution to limit the possible instrument of impeachment to that same narrow class of cases.[10]

Bound by the constitutional impeachment standards, a judicial council does not have authority to create its own definition of impeachable offenses or to consider a cumulation of non-impeachable offenses as grounds for possible impeachment. As the statutory text and the legislative history of the act authorizing this council

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[9]U.S. Const. art. II, § 4.

[10]*See* Frank O. Bowman, III & Stephen L. Sepinuck, *"High Crimes & Misdemeanors": Defining the Constitutional Limits on Presidential Impeachment*, 72 S. Cal. L. Rev. 1517, 1519-20 & n.5 (1999) ("Bowman & Sepinuck").

make clear, judicial councils may not alter or interfere with the constitutionally defined impeachment process.[11] Rather, the concept underlying the act was to allow the judicial council to deal with matters falling short of impeachment but that could affect the administration of justice.[12] Therefore, Congress did not authorize judicial councils to create their own definitions of impeachable offenses or suggest removal for offenses falling short of the Article II "Treason, Bribery, or other high Crimes and Misdemeanors" standard.[13]

In contravention of these principles, this council

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[11] *See* 28 U.S.C. § 354(b)(2)(A) (prompting certification of a complaint to the Judicial Conferences when it "might constitute one or more grounds for *impeachment under article II of the Constitution*") (emphasis added).

The legislative history underlying this act confirms this reading. For example, the Senate report terms the act "a supplement to, but not a substitute for, the seldom used process of impeachment" and states "nor is any effort made to alter or modify the constitutional impeachment process." S. Rep. No. 96-362, at 3-4 (1979). The Senate Report reiterated this limitation, noting that the primary purpose of the act was to "deal with matters which for the most part fall short of being subject to impeachment. And, where impeachment may be appropriate, traditional constitutional procedures continue to govern." *Id.* at 4.

[12] The act intended judicial councils "to deal with those matters which do not rise to the level of impeachable offenses . . . . Complaints relating to the conduct of a member of the judiciary which are not connected with the judicial office or which do not affect the administration of justice are without jurisdiction and therefore outside the scope of this legislation." S. Rep. No. 96-362, at 3 (1979). As the Senate report re-emphasized, the act was intended to "deal with matters which for the most part fall short of being subject to impeachment," to "fill in the void which currently exists in the law between the impeachable offenses and doing nothing at all." *Id.* at 4-5. *See also Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984).

[13] *Cf. Hastings v. Judicial Conference of U.S.*, 593 F. Supp. 1371, 1382 (D.D.C. 1984) ("[In light of Congress's expressed intent], this Court holds that Congress therefore did not intend to authorize investigation and formal proceedings against a judge for one or two isolated instances of possibly unethical or inappropriate official conduct unless such conduct, by itself, could amount to an impeachable offense.").

may have overstepped its constitutional and congressionally intended bounds by mistakenly proceeding under the erroneous assumption that it may properly accumulate non-impeachable offenses to find the possibility of impeachment for an aggregate of less serious crimes. Such a practice, though, exceeds the council's congressional authorization and defies the Constitution because it essentially creates an anomalous and eccentric definition of an impeachable offense.[14]

To avoid such errors and to evaluate possible impeachable offenses intelligently and constitutionally, members of both Congress and judicial councils must address the difficult problem of ascertaining what qualifies as treason, bribery, and other high crimes and misdemeanors for which a judge may constitutionally be impeached and removed from office.[15] Accordingly, in determining the limits of the constitutional phrase "treason, bribery, or other high crimes and misdemeanors," congressional and judicial council members should generally conform to the historical practice of relying on the same sources courts have consulted in construing other constitutional provisions: the language of the Constitution; the evident intent of the framers and ratifiers; the body of precedent created by prior impeachment proceedings; and the views of scholars and

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[14] *See id.*

[15] *See* U.S. Const. art. II, § 4; 28 U.S.C. § 354(b)(2)(A).

other commentators.[16]

A.

The Framers were influenced by the law and practice of England in deciding that "Treason, Bribery, or other high Crimes and Misdemeanors" would be the only offenses for which a federal judge or other constitutional officer could be impeached. In the preceding English experience, impeachable offenses were political crimes, impeachment was a political proceeding, and "high crimes and misdemeanors" was a category of political crimes against the state.[17] Initially in the constitutional convention, Mason proposed to expand the Constitution's definition of impeachable offense by adding the word "maladministration" to follow the words "treason and bribery."[18] Madison objected to this proposal, arguing that "[s]o vague a term [would] be equivalent to a tenure during the pleasure of the Senate."[19] Mason then withdrew "maladministration," substituting instead "other high

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[16] *See* Bowman & Sepinuck, *supra* note 10, at 1521. *See also* Daniel H. Pollitt, *Sex in the Oval Office and Cover-Up Under Oath: Impeachable Offense?*, 77 N.C. L. Rev. 259, 262 (1998) ("Pollitt"); Michael J. Gerhardt, *The Constitutional Limits to Impeachment and Its Alternatives*, 68 Tex. L. Rev. 1, 9, 41 (1989) ("Constitutional Limits to Impeachment").

[17] *See* Michael J. Gerhardt, The Federal Impeachment Process: A Constitutional and Historical Analysis, 103 (2d ed. 2000) ("The Federal Impeachment Process"); Bowman & Sepinuck, *supra* note 10, at 1529; Pollitt, *supra* note 16, at 265.

[18] *See* Bowman & Sepinuck, *supra* note 10, at 1524; Pollitt, *supra* note 16, at 265.

[19] Pollitt, *supra* note 16, at 265.

crimes and misdemeanors agst. the State."[20] The ratification debates confirm that "other high Crimes and Misdemeanors" include only "great offenses" against the federal government.[21] Thus, delegates to state ratification conventions often referred to impeachable offenses as "great" offenses and said impeachment should apply if the official "deviates from his duty" or if he "dare to abuse the powers vested in him by the people."[22]

Alexander Hamilton similarly observed that:

> The subject [of the Senate's] jurisdiction [in an impeachment trial] are those offenses which proceed from the misconduct of public men, or, in other words, from the *abuse or violation of some public trust*. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.[23]

In sum, although the framers and ratifiers of the Constitution saw the need, in extraordinary cases, for a vehicle to remove a president, judge, or other constitutional civil officer, they sought to ensure that those officers would retain a high degree of independence

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[20] *Id.*

[21] The Federal Impeachment Process, *supra* note 17, at 104-05; Bowman & Sepinuck, *supra* note 10, at 1530.

[22] *See* Constitutional Limits to Impeachment, *supra* note 16, at 65 & n.378-79 (emphasis added).

[23] *Id.* at 85-86 (*citing* THE FEDERALIST NO. 65, at 396 (A. Hamilton) (C. Rossiter ed. 1961).

and not be subjected to removal simply at the pleasure of Congress. Accordingly, they provided for removal of judges and other officers only upon impeachment by the House and conviction by a super-majority of the Senate for a specific class of offenses, "Treason, Bribery, or other high Crimes or Misdemeanors," that include only those political or public crimes which constitute an abuse or violation of the constitutional powers entrusted to the officer.

B.

Congress, when dealing with federal judges, has faithfully restricted its use of the impeachment power to the core of the constitutional impeachable offenses as intended by the framers and ratifiers.[24] Accordingly, throughout United States history, a total of twelve federal judges have been impeached, and an analysis of their cases shows that Congress has only voted to impeach in instances of judges abusing their official, constitutional powers.[25] Of the twelve judges impeached, only seven have been convicted and removed from office by

[24] *See* Pollitt, *supra* note 16, at 277; The Federal Impeachment Process, *supra* note 17, at xii ("The seven federal officials whom the Senate has convicted and removed — all judges — shared misconduct that caused serious injury to the republic and had a nexus with the official's formal duties."); *see also id.* at 194 ("[I]n over two hundred years Congress has impeached only sixteen officials (including two presidents) but removed only seven judges. Close cases do not produce removals; only compelling ones do."); Pollitt, *supra* note 16, at 267 ("Since 1796, although some sixty or more impeachment proceedings have been filed, the House has voted to impeach only fifteen persons.").

[25] *See generally*, Bowman & Sepinuck, *supra* note 10, at 1566-98; Pollitt, *supra* note 16, at 268-77.

the Senate. Four have been acquitted in Senate hearings, and one resigned before the Senate could act.[26]

i.

Judge John Pickering was impeached in 1803 and convicted by the Senate in 1804 for improper rulings, drunkenness on the bench, and blasphemy.[27] Pickering allegedly rendered judgment on the merits of a case while refusing to hear relevant testimony offered by the attorney general, disregarded and attempted to evade federal law, and refused to permit an appeal; further, he appeared on the bench while intoxicated and apparently suffered from insanity.[28]

Judge West H. Humphreys was impeached and convicted by the Senate in 1862 for actions most akin to treason, *i.e.*, incitement to revolt and rebellion.[29] Humphreys joined the Tennessee secession and served as a District Court Judge in the Confederate States of America without retiring from the federal bench; during his impeachment he made no appearance and offered no defense.[30]

Judge Robert W. Archbald was impeached in 1912 and convicted by the Senate in 1913 for bribery, using his

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[26] *See* Bowman & Sepinuck, *supra* note 10, at 1566-98.

[27] *Id.* at 1567-68.

[28] *Id.*; Pollitt, *supra* note 16, at 270.

[29] Bowman & Sepinuck, *supra* note 10, at 1571-72.

[30] *Id.*; Pollitt, *supra* note 16, at 272.

position as a judge to induce numerous litigants to allow him profitable financial deals, and hearing cases in which he had a financial interest.[31] In a number of instances, Archbald coerced a railroad company, which had several cases pending before him, and a series of other litigants to sell or lease him and a partner certain profitable property.[32] Archbald also received a $500 bribe in exchange for attempting to induce other litigants to lease profitable property to Archbald's associate.[33]

Judge Halstead L. Ritter was impeached and convicted by the Senate in 1936 for creating kickback schemes, continuing to work on a case as a lawyer while already a judge, evading federal income tax, bartering his judicial authority for a vote of confidence, and bringing his court into scandal and disrepute.[34] Among his articles of impeachment were findings that he awarded a receivership to a former partner and increased the receivership fees by $75,000 in return for a $4,500 kickback, which led to the income-tax evasion because he failed to report the sum.[35]

Judge Harry Claiborne was impeached and convicted by

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[31] Bowman & Sepinuck, *supra* note 10, at 1581-84.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 1588.

[35] *Id.*; Pollitt, *supra* note 16, at 274-75.

the Senate for tax evasion in 1986.[36] Prior to his impeachment, Claiborne had been judicially convicted of criminal tax evasion for substantially under-reporting his income in 1979 and 1980; the income he failed to report was profit from bribes.[37] He was sent to prison but refused to resign, so he continued to draw his federal salary while serving jail time.[38] This apparently prompted his impeachment proceedings.

Judge Alcee L. Hastings was impeached in 1988 and convicted by the Senate in 1989 for conspiracy to solicit a bribe and perjury after having been criminally indicted and acquitted for bribery and conspiracy.[39] Hastings allegedly attempted to obtain $150,000 from a defendant in a case before him in exchange for a sentence not requiring jail time and then allegedly lied to a grand jury about the matter.[40] Though Hastings was acquitted in his criminal trial for bribery and conspiracy, Hastings' alleged co-conspirator was convicted in a separate trial.[41]

Finally, Judge Walter L. Nixon was impeached and

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[36] Bowman & Sepinuck, *supra* note 10, at 1590-91.

[37] Pollitt, *supra* note 16, at 275.

[38] *Id.*; Bowman & Sepinuck, *supra* note 10, at 1590-91.

[39] Bowman & Sepinuck, *supra* note 10, at 1591.

[40] *Id.*

[41] *Id.*

convicted by the Senate for perjury in 1989.[42] Prior to his impeachment, Nixon had been judicially convicted on federal criminal charges of perjury and was serving a five-year sentence.[43] Nixon's perjury conviction arose out of statements he made to a grand jury, which was investigating bribery charges alleging that Nixon accepted a gratuity in exchange for attempting to influence a state's drug prosecution against a business partner's son.[44] Like Judge Claiborne, Nixon was sentenced to imprisonment and refused to resign, so that he continued to receive federal judicial compensation while in prison, prompting Congress to institute impeachment proceedings.[45]

ii.

Supreme Court Justice Samuel Chase was impeached but acquitted by the Senate in 1804 for bias in charging a grand jury and other action from the bench.[46] The articles of impeachment against Chase state that he attempted to prejudice juries before defense counsel could be heard, prohibited defense counsel from addressing the jury on the law, seated a juror who had

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[42] *Id.* at 1595.

[43] *Id.*

[44] *Id.*; Pollitt, *supra* note 16, at 276.

[45] Pollitt, *supra* note 16, at 276.

[46] Bowman & Sepinuck, *supra* note 10, at 1569-71.

already decided that a defendant was guilty, and delivered political speeches from the bench.[47]

Judge James H. Peck was impeached 1830 but acquitted by the Senate in 1831 for holding a lawyer who criticized his rulings in contempt.[48] When a local newspaper printed a letter, written by a lawyer, criticizing one of Peck's rulings, Peck had the lawyer arrested, held him in contempt, ordered him imprisoned for 24 hours, and suspended him from practicing before the court for eighteen months.[49] The impeachment was based on "[Peck's] unjust, oppressive, and arbitrary contempt order and his general gross abuse of power as a judge," but "the Senate voted not to convict because criminal intent had neither been charged nor proved."[50]

Judge Charles H. Swayne was impeached in 1904 but acquitted by the Senate in 1905 for falsifying expense accounts and using property held in receivership.[51] The articles of impeachment alleged three instances of Swayne falsely inflating his travel expenses in an attempt to defraud the federal government into over-paying him; in two separate instances, Swayne also appropriated the use of a railroad car, which was held under receivership, to

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[47] *Id.*

[48] *Id.* at 1571.

[49] *Id.*

[50] Pollitt, *supra* note 16, at 271-72.

[51] Bowman & Sepinuck, *supra* note 10, at 1578-79.

transport himself, his family, and friends from Delaware to Florida and from Florida to California.[52] Swayne then allowed the receiver to claim these expenses as necessary costs of operating the railroad.[53] The Senate ultimately acquitted Swayne, whose "defense was that even if the charges against him were accepted as true, those acts did not satisfy the constitutional definition of high crimes and misdemeanors."[54]

Judge George English was impeached in 1926 for favoritism, improper conduct, and improper use of bankruptcy funds in his court; he resigned before the Senate could take action on the matter.[55] Among English's articles of impeachment were allegations that he disbarred two lawyers without giving notice, proffering charges, or allowing them to speak in their own defense.[56] He also allegedly threatened to incarcerate jurors if they did not return guilty verdicts and constructed a fake trial for the purpose of summoning and berating local officials.[57]

Judge Harold Louderback was impeached but acquitted by the Senate in 1933 for using favoritism in appointing

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[52] *Id.*

[53] *Id.*

[54] Pollitt, *supra* note 16, at 273.

[55] Bowman & Sepinuck, *supra* note 10, at 1585-86.

[56] *Id.*

[57] *Id.*

receivers.[58] The articles of impeachment against Louderback alleged four separate instances of Louderback creating kickback schemes to enrich his friends at Litigants' expense; "lacking evidence that Louderback had received any direct personal financial gain from these appointments, however, the Senate voted to acquit him."[59]

iii.

As the examples above demonstrate, Congress has applied the meaning of "high crimes and misdemeanors" by voting to impeach judges only when their alleged conduct has included abuses of constitutionally entrusted powers. Among the judges convicted by the Senate, for example, Judges Nixon's and Claiborne's convictions for perjury to cover up bribery before a grand jury and tax evasion, respectively, demonstrate their abuse of their judicial power. Both also allegedly engaged in bribery, a specifically identified impeachable offense. Similarly, Judge Hastings was alleged to have accepted bribes, and Judge Ritter's kickback schemes and Archbald's financial manipulations, both of which arguably involved bribery, also hinged on their abuse of official judicial power. The allegations that Judge Pickering took the bench while intoxicated, improperly denied an appeal, refused to allow the attorney general to present witnesses' testimony, and arbitrarily entered judgment without

[58] *Id.* at 1586-87.

[59] *Id.*; Pollitt, *supra* note 16, at 274.

conducting trial or hearing witnesses similarly implicate abuse of his official judicial duty and power. Finally, Judge Humphreys' actions essentially constituted treason, another specifically identified impeachable offense.

Even for those judges impeached but not convicted by the Senate, the impeachment grounds hinged on abuses of official constitutional powers. Judges Louderback and Swayne, acting in their official federal capacities, allegedly abused the receivership process and, in Swayne's case, attempted to defraud the federal government into over-paying judicial expenses. Judge Peck acted in his official capacity by ordering arrest and contempt charges; and all of the allegations against Justice Chase and Judge English similarly implicate abusive conduct from the bench toward litigants and jurors.

C.

According to the constitutional text, the evident intent of the framers and ratifiers, the body of precedent created by prior judicial impeachment proceedings, and the views of scholars and other commentators, impeachable high crimes and misdemeanors are limited to abuses or violations of constitutional judicial power. Thus, any conduct short of an abuse or violation of constitutionally entrusted power cannot constitute a possible impeachable offense.

3.

The special investigating committee and the judicial council majority neither alleged nor found that Judge Porteous had committed treason, bribery, or other high crimes or misdemeanors, or that he had engaged in misconduct which constituted an abuse or violation of constitutional judicial power. The only violations of law or canons of judicial conduct that the committee or the council majority alleged or found Judge Porteous to have committed do not amount to impeachable offenses because they do not amount to an abuse or violation of the constitutional judicial powers entrusted to him. Accordingly, although the misconduct which the committee and council majority attributed to Judge Porteous warrants a public reprimand, it does not constitute any of the constitutional grounds for impeachment, and the council majority therefore erroneously certified this case for possible impeachment.

The DOJ as complainant, the special investigatory committee, and the judicial council majority have never alleged that Judge Porteous committed treason or bribery.[60] In fact, the special committee expressly concedes that there is no allegation of bribery in the complaint or charge against Judge Porteous.[61] Although

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[60] *See* U.S. Department of Justice Complaint of Judicial Misconduct Concerning the Honorable G. Thomas Porteous, Jr. ("Complaint"); The Special Committee for the Fifth Circuit Judicial Council Charges of Judicial Misconduct; Special Committee Response to Reply Memorandum at 9.

[61] Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

the committee introduced evidence of alleged misconduct by Judge Porteous while he was a state judge, the committee admitted that it has no authority over such non-federal judicial conduct.[62] Furthermore, because the only constitutional grounds for impeachment of a federal judge are his commission, while on the federal bench, of treason, bribery and other high crimes and misdemeanors against the United States, the Congress lacks jurisdiction to impeach, and the judicial council lacks authority to certify for possible impeachment, Judge Porteous for any misconduct prior to his appointment as a federal judge.[63]

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[62] The Special Committee concedes that it has "never taken the position that it has authority over Judge Porteous's judicial misconduct as a state judge." Special Committee Response to Reply Memorandum at 4.

[63] *See* The Federal Impeachment Process, *supra* note 17, at 108-09. *See also* Special Committee Response to Reply Memorandum at 4 (conceding that the committee has "never taken the position that it has authority over Judge Porteous's judicial misconduct as a state judge.").

Records of past impeachment proceedings also demonstrate that evidence relating to state-level judicial misconduct falls outside the proper scope of an impeachment inquiry into misconduct as a federal judge. During the Senate conviction proceedings for Judge Archbald in 1913, the Judge's counsel presented an extensive brief arguing why the last six articles of impeachment should not stand. Counsel argued that because those articles related to Judge Archbald's tenure as a district court judge and the impeachment concerned his position as a judge on the Commerce Court, the evidence of conduct occurring during Archbald's district court tenure, *i.e.*, prior to his then-current federal office, was irrelevant and outside the scope of a proper impeachment inquiry. In response, the senate found Archbald "not guilty" for all six articles wholly concerned with his actions during his district court tenure though they convicted Archbald on the other articles.

The argument in Judge Archbald's case, equally applicable here, revolved around Article I, section 3, of the Constitution, which states "Judgment in the Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States." As primary legal authority, Judge Archbald's counsel cited to Justice Story's Commentaries on the Constitution of the United States, which interprets the relevant clause as follows:

Thus, the special committee and council majority erred in certifying this matter, having found only non-impeachable offenses but mistakenly averring that there might be an impeachable offense among them. The council majority's Memorandum Order and Certification describes the offenses it found as follows:

> As it is declared in one clause of the Constitution, that 'judgment, in cases of impeachment, shall not extend further, than a removal from office, and disqualification to hold any office of honour, trust, or profit, under the United States;" and in another clause, that "the president, vice president, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes or misdemeanours;" it would seem to follow, that the Senate, on the conviction, were bound, in all cases, to enter a judgment of removal from office, though it has a discretion, as to inflicting the punishment of disqualification. *If, then, there must be a judgment of removal from office, it would seem to follow, that the Constitution contemplated, that the party was still in office at the time of the impeachment. If he was not, his offence was still liable to be tried and punished in the ordinary tribunals of justice.* And it might be argued with some force, that it would be a vain exercise of authority to try a delinquent for an impeachable offence, when the most important object, for which the remedy was given, was no longer necessary, or attainable. And although a judgment of disqualification might still be pronounced, the language of the Constitution may create some doubt, whether it can be pronounced without being coupled with a removal from office. There is also much force in the remark, that an impeachment is a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person, nor his property; but simply divests of his political capacity.

Story, Commentaries on the Constitution § 801 (1833) (emphasis added).

Since Judge Porteous is no longer a state court judge, it is up to the "tribunals of justice" to hold Judge Porteous liable for his actions in that capacity-- which they have not. The scope of the current impeachment inquiry only pertains to Judge Porteous's actions consonant to the remedy at issue-- removal of Judge Porteous from his current federal judicial capacity for abuse of constitutional power related to his current position-- not to actions taken while in state-level positions he no longer holds.

(a) Porteous filed numerous false statements under oath during his and his wife's Chapter 13 bankruptcy, including filing the petition under a false name; concealing assets of the bankruptcy estate; failing to identify gambling losses; and failing to list all creditors. Porteous additionally violated bankruptcy court orders forbidding him from incurring debt during the course of the Chapter 13 case without approval of the trustee or bankruptcy judge, in that he continued regularly to incur short-term extensions of credit from various casinos. Porteous additionally made unauthorized and undisclosed payments to preferred creditors after the commencement of the bankruptcy case.

(b) Porteous engaged in fraudulent and deceptive conduct concerning the debt he owed to Regions Bank prior to bankruptcy.

(c) Porteous received gifts and things of value from attorneys who had cases pending before him. During one particular case (*Liljeberg*), Porteous was requested to recuse from the case but instead ruled against the movant without disclosing to any party his history of financial relationships with at least one counsel in the case.

(d) Porteous's financial disclosure statements for the years 1994-2000 are inaccurate and misleading insofar as they fail to report the gifts and things of value he received from attorneys, and in the year 2000 failed to report accurately significant amounts of reportable indebtedness owed by Judge Porteous.

None of these offenses or ethical violations constitutes a high crime or other impeachable offense because none represents an abuse or violation of constitutional judicial power.

A. Appearances of Impropries in Connection with the *Liljeberg* Case

In essence, the judicial council majority finds that Judge Porteous committed several serious appearances of improprieties under the Code of Conduct. I agree with that finding and think that Judge Porteous should be given the most severe sanction at the council's disposal for these infractions, a public reprimand. I emphatically disagree with the council majority, however, if, without specifically finding or saying so, it believes that these appearances of improprieties are high crimes or misdemeanors.

Judge Porteous presided over the *Liljeberg* case, in which Judge Porteous's long-time friends Amato, Levenson, and Gardner represented opposing parties.[64] Arising out of these circumstances, the judicial council found several appearance-of-impropriety violations of the Code of Conduct: first the council found that, before Gardner

[64]Though the special committee report mentions Levenson, he is not the primary focus of the allegations because his role in the appearances of improprieties during the *Liljeburg* case is less significant than those of Amato, Creely, or Gardner. The special committee report notes that Levenson paid for some expenses related to one of Judge Porteous's son's externships in Washington, D.C. prior to the *Liljeberg* case and also often took Judge Porteous out to lunch and paid for the meals. Special Committee Report at 60. Such conduct appears fitting with Judge Porteous's and Levenson's relationship because, like Amato, Creely, and Gardner, Levenson is also a long-time friend of Judge Porteous's. Levenson Grand Jury Testimony at 6-8.

At the outset of their relationship, Levenson treated Judge Porteous to lunch, which Levenson testified was often the case in social relationships between judges and lawyers, and this practice continued when Judge Porteous became a federal judge. *Id.* at 11-12. Levenson testified that though he paid for lunches during the pendency of the *Liljeburg* case, he never did so during the actual trial. *Id.* at 44. Furthermore, Levenson testified that his payment of expenses for Judge Porteous's son was a "long time ago," hence before, and unrelated to, the *Liljeburg* case, and amounted to "a couple of hundred dollars." *Id.* at 65-6.

entered the case as an attorney, Judge Porteous declined to either recuse himself or disclose to the parties the closeness of his thirty-year friendships with Amato and Levenson, and second the council found that during the pendency of *Liljeberg*, Judge Porteous received financial assistance from Amato and Amato's partner Creely, another long-time friend, to help pay for his son's wedding and also attended his son's bachelor party in Las Vegas with Gardner and Creely, among a score of other guests, where Creely paid for his hotel room.

In the absence of Judge Porteous's and his lawyer friends' involvement in the *Liljeberg* case, of course, there would have been nothing wrong with his receiving gifts from them in connection with his son's wedding. This would have been the natural result of their 30 year relationship during which their families regularly celebrated such occasions together.[65] But because of the serious appearance of impropriety that these gifts presented in light of *Liljeberg*, Judge Porteous should have avoided the situation entirely by recusal or disclosure.

Thus, because of the intersection between the close

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[65] Judge Porteous, Amato, Gardner, and Creely have been close friends for over 30 years. *See* Special Committee Hearing Transcript ("SCHT") at 461. Amato, Creely, and Judge Porteous met as young lawyers practicing together. *See* SCHT at 198, 236-37. All four frequently enjoyed such diversions as hunting, fishing, or having lunch together. *See* SCHT at 229. Over time their families also became close. *See* SCHT at 259. They attend each others' various parties, birthdays, weddings, and other events. *See* SCHT at 154. In fact, Judge Porteous is godfather to one of Gardner's daughters. *See* SCHT at 154. In connection with this social interchange, they engaged in the customary mutual benevolence of reciprocal gift-giving and funding of costs of celebrations and social events. *See* SCHT at 461-62.

friendships, the *Liljeberg* case, and Judge Porteous's son's wedding, Judge Porteous's failure to take corrective action resulted in serious appearance-of-impropriety ethical violations. However, because all of the sworn testimony indicates without dispute that Judge Porteous did not commit bribery, *i.e.*, he did not solicit or accept any private favor or benefit in exchange for official action, Judge Porteous's ethical infractions during the *Liljeberg* case did not amount to a high crime or high misdemeanor because he did not abuse or violate the constitutional judicial power entrusted to him. Further, because Judge Porteous created only appearances of improprieties, his misconduct was not as serious as actual ethical improprieties under the Code.[66]

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[66] The creation of an appearance of impropriety is distinguishable from an actual impropriety or actual misconduct under the Code of Conduct for United States Judges. As the Commentary to Canon 2A notes, "actual improprieties . . . include violations of law, court rules, or other specific provisions of this code," whereas "the test for appearance of impropriety is whether the conduct would create in reasonable minds . . . a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired."

Here, there is no evidence, allegation, or finding that Judge Porteous violated a law or court rule through his actions during the *Liljeberg* case because there is no evidence or allegation that Judge Porteous's relationship with lawyers on either side of the case influenced his impartial judgment or disposition in the matter. Further, in light of this lack of evidence of bribery or other actual bias during *Liljeberg*, the only canonical violations alleged against Judge Porteous, violations of Canons 1, 2, 3, 5, and 6, are necessarily limited to his creating only an appearance of partiality. Thus, his failure to recuse or disclose his relationship constitutes a mere appearance of impropriety rather than actual impropriety under the canons.

As evidenced by the remedies often awarded to litigants, a Judge's appearance of impropriety is less serious than an actual impropriety. For example, a finding that a judge failed to recuse for an actual impropriety generally requires the remedy of vacatur, whereas a finding of failure to recuse for appearance of impropriety often calls only for prospective recusal. *See In re Cargill, Inc.*, 66 F.3d 1256, 1264 (1st Cir. 1995) (holding that an appearance of impropriety does not require immediate relief whereas actual impropriety would); *In re Allied-Signal Inc.* 891 F.2d 967, 973 (1st Cir. 1989) (reasoning that because no actual impropriety was alleged, retroactive relief was unnecessary in a case of appearance of impropriety); *U.S. v. Widgery*, 778 F.2d 325, 328 (7th Cir. 1985) ("Disqualification for the appearance of impropriety runs

Equally important here, Congress's impeachment precedents demonstrate that Judge Porteous's *Liljeberg* conduct falls far short of impeachable crimes under the Constitution. The congressional impeachments of Judges Nixon, Hastings, Claiborne, Archbald, and Humphreys, for example, resulted in their removal for treason and bribery. Judge Porteous engaged in no treason or bribery at anytime, either in connection with *Liljeberg* or otherwise.[67] Also unlike the cases of Judges Ritter, Louderback, and Swayne, no evidence here suggests that the gifts Judge Porteous received during *Liljeberg* constituted a quid pro quo for official action or in any way connected to his official powers.

During the pendency of *Liljeberg*, Judge Porteous accepted gifts from Creely and Amato to defray his adult son's wedding expenses and attended his son's bachelor party with Creely and Gardner, and both of these instances fit within the context of their extensive social relationships and had nothing to do with the *Liljeburg* case. Thus, the difference between Judge Porteous's conduct during *Liljeberg* and the impeachable conduct of Ritter, Archbald, Louderback, and Swayne, is that all the impeached judges' conduct involved abuses of

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prospectively only; even a successful motion does not vitiate acts taken before the motion was filed . . . . Disqualification under . . . for an actual impropriety would indeed require a new hearing") (internal citation omitted).

As such, the appearance of an impropriety is deserving of a lesser sanction, if any, than an actual impropriety or actual misconduct.

[67] *See* Special Committee Response to Reply Memorandum at 9 ("no specific allegations of bribery appear in the Complaint or in the Charge").

official power, *viz.*, awarding receiverships, using property in receivership, accepting bribes, influencing litigants' financial decisions, and falsifying expense accounts,[68] whereas it is undisputed that Judge Porteous never acted out of fear or favor of any litigant or attorney and never abused or violated the constitutional power entrusted to him.[69] Finally, the violations alleged against the impeached judges spanned multiple cases, whereas the committee and council's allegations against Judge Porteous center on only the *Liljeberg* case.

Furthermore, the special committee and council majority do not dispute, but, in effect, concede that Judge Porteous's conduct amounted only to a non-impeachable appearance of impropriety. They never find that Judge Porteous's conduct constituted an actual impropriety, much less an abuse or violation of official constitutional judicial power. The special investigating committee's report finds that none of Judge Porteous's ethical violations was more egregious than his conduct

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[68] Judges Ritter and Louderback allegedly concocted numerous kickback schemes across many cases, Judge Archbald wielded his office for financial advantage against a number of litigants throughout his docket, and Judge Swayne attempted to swindle the federal government on at least three different occasions and commandeered a railroad car in receivership for two different trips.

[69] In unrebutted testimony, 1) Judge Porteous stated that he has "been fair and impartial in every proceeding [before him]," SCHT at 157; 2) Creely stated that he never thought that his gifts to Judge Porteous would influence his decision in *Liljeberg* or any other case and that he did not believe Judge Porteous's rulings to rely "one way or the other" on these gifts, SCHT at 229, 231; and 3) Amato testified that there was no quid pro quo or expectation of judgment tied to his gifts to Judge Porteous, SCHT at 256, and that any money given to Judge Porteous was "because we're friends and we've been friends for 35 years," rather than because Judge Porteous is a judge or to influence his decisions. SCHT at 258-59.

during the *Liljeberg* case but concludes 1) that Judge Porteous should have advised the parties of his financial relationship with Amato and the Creely & Amato law firm as soon as the recusal motion was filed; and 2) that Judge Porteous should have granted the motion to recuse or given the parties the choice of keeping him as a trial judge. The committee further found that Judge Porteous's asking for and receiving Amato's and Creely's financial assistance with his son's wedding and allowing Creely to pay for his hotel room in connection with his son's bachelor party compounded the appearances of improprieties. But the committee correctly did not find that anything other than appearances of improprieties, rather than actual improprieties,[70] resulted from this conduct under the Code. Thus, the committee found that the failure to recuse, Judge Porteous's worst ethical offense, was not an irremediable actual impropriety under the Code but rather an appearance of impropriety, which, if disclosed, the parties could have cured by agreement. The appearances of serious improprieties allowed by Judge Porteous warrant the most severe sanction that the judicial council can impose, a public reprimand, but because Judge Porteous did not commit an actual abuse or violation of the constitutional judicial power entrusted to him, he did not commit a high crime or high misdemeanor for which he may be impeached and removed from office.

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[70] *See supra* note 66.

B. Offenses Related to Personal Bankruptcy, Personal Bank Loan, and Personal Financial Disclosure

The committee's and council majority's findings that Judge Porteous violated criminal statutes relating to his bankruptcy, bank loan, and financial disclosure statements do not constitute findings of possible impeachable offenses, because, rather than constituting the exercise of the constitutional judicial power entrusted to Judge Porteous, his misconduct in these respects was restricted to private conduct and reporting of private financial affairs.[71] These alleged crimes implicate no bribery or treason on Judge Porteous's part. Moreover, they involve neither Judge Porteous's actions from the bench nor any litigants or lawyers involved in cases before Judge Porteous. So, unlike the conduct underlying the charges against every federal judge ever impeached, Judge Porteous's conduct in his bankruptcy, bank loan, and financial disclosure statements neither depended upon nor utilized his constitutionally entrusted powers. In sum, these offenses involve only Judge Porteous the private citizen and disclosure of his

[71] In *Duplantier v. United States*, 606 F.2d 654 (5th Cir. 1979), the Fifth Circuit examined the statutory financial disclosure obligations that Judge Porteous allegedly violated. The disclosure obligation entails filing a "personal financial report," *id.* at 659 and its statutory intent was to require judges to report for public disclosure judges' *private* financial interests, *id.* at 668 n.30. In *Duplantier*, The Fifth Circuit concluded: "Judges should not be harassed in the legitimate exercise of their duties, and we should tread softly before imposing publicity on their *private financial affairs* which may be a serious threat to judicial independence and may erode that independence so necessary to the proper functioning of the judiciary. Federal judges may properly inquire what necessity brought about the provisions of the Act of Congress which will cause many of their intimate personal and confidential financial affairs to be open to public inspection." *Id.* at 672.

private wealth and financial affairs, not Judge Porteous's use or abuse of constitutional judicial power. As such, because these allegations entail no abuse of official constitutional power, these alleged offenses involving personal, private conduct generically and categorically fall outside the scope of impeachable offenses.

4.

For the foregoing reasons, a detailed examination of the evidence may be unnecessary to a determination that this case does not present a possible treason, bribery, high crime or misdemeanor, or an abuse or violation of constitutional judicial power. Nevertheless, every judge participating in deciding whether to refer this or any case to the House of Representatives for consideration of possible impeachment will wish to have a good understanding of the evidence and record in the case. Accordingly, in the interest of aiding other judges in reviewing and evaluating the evidence, I respectfully suggest that a fair and impartial assessment of the evidence reveals that the case against Judge Porteous, while still warranting a public reprimand, is not as formidable as the committee report represents for many of the same reasons that the DOJ or the grand jury, or both, decided that a criminal prosecution of Judge Porteous was not warranted.

The Federal Bureau of Investigation ("FBI") and a grand jury empaneled in the Eastern District of Louisiana

spent nearly five years investigating Judge Porteous in connection with a number of potential criminal charges.[72] Specifically, the FBI investigated Judge Porteous for conspiracy to bribe a public official in violation of 18 U.S.C. §§ 201 and 371, commission or conspiracy to commit honest services mail- or wire-fraud in violation of 18 U.S.C. §§ 371, 1341, 1343, and 1346, submission of false statements to federal agencies and banks in violation of 18 U.S.C. §§ 1001 and 1014, and filing false declarations, concealing assets, and acting in criminal contempt of court during his personal bankruptcy action in violation of 18 U.S.C. §§ 152 and 401.[73]

After this extensive investigation, the DOJ decided to press no criminal charges against Judge Porteous based both on statute of limitations bars to certain charges and on determination that the government could not meet its burden of proof for the non-barred charges.[74] It is unclear whether the DOJ decided not to continue or the grand jury returned submitted charges without an indictment. The DOJ specifically said "the government's heavy burden of proof in a criminal trial, and the obligation to carry that burden to a unanimous jury; concerns about the materiality of some of Judge Porteous's provably false statements; the special difficulties in proving mens rea and intent to deceive

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[72] Complaint at 1.

[73] *Id.* at 1-2.

[74] *Id.*

beyond a reasonable doubt in a case of this nature" led to a decision not to prosecute.

The same evidence presented to the grand jury was before the judicial council, and considered under any reasonable standard of proof,[75] it still arguably cannot support a conclusion that Judge Porteous should be held responsible for the alleged criminal offenses to the extent claimed by the committee because the record cannot support an essential element of the criminal allegations, *viz.*, intent to deceive or defraud, save for the least serious offense which does not require proof of this element. The Complaint alleges, and the Special Committee agreed, that the pertinent allegations of criminal offenses are violations of 18 U.S.C. § 1621, perjury; § 152, bankruptcy fraud; § 1001, false statements to federal agencies; § 1014, false statements to a financial institution; § 1344, bank fraud; and § 371, conspiracy.

To prove a violation of 18 U.S.C. §§ 1621, 152, or 1344 requires proof of a specific intent to defraud; and 18 U.S.C. § 1014 requires proof of a specific intent to influence the bank.[76] "The requisite intent to defraud is

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[75] Another problem in the Special Committee's treatment of the allegations is the failure to identify the standard of proof required to substantiate these allegations. As noted earlier, the DOJ concedes these allegations probably can not be proved beyond a reasonable doubt.

[76] For perjury under § 1621(2), "in order to constitute perjury, a false statement must be made with criminal intent, that is, with intent to deceive, and must be wilfully, deliberately, knowingly and corruptly false." *Beckanstin v. United States,* 232 F.2d 1, 4 (5th Cir. 1956). For bankruptcy fraud under § 152, according to the Fifth Circuit pattern jury instructions, to convict under Section 152(1), the Government must prove: (1) "That there existed a proceeding in bankruptcy"; (2) "That certain property or assets belonged to the bankrupt estate"; (3) "That defendant concealed such property from the creditors [custodian] [trustee] [marshal] [some person] charged with control or custody of such property"; and (4) "That the defendant *did so*

established if the defendant acted knowingly and with the specific intent to deceive, ordinarily for the purpose of causing some financial loss to another or bringing about some financial gain to himself."[77] As I discuss in the balance of this section, the record evidence forms an arguably insufficient foundation for the conclusion that Judge Porteous harbored the requisite specific intent for the aforementioned alleged criminal offenses.

The Special Committee finds a violation of 18 U.S.C. § 1621(2), the general perjury statute, because Judge Porteous submitted a bankruptcy petition using an alias ("Orteous") as suggested by his attorney to avoid negative publicity. However, the record shows that Judge Porteous and his attorney intended to correct the name soon after the petition was filed and, in fact, did correct it just twenty days later. Since (1) Judge Porteous relied on his lawyer's advice[78] and (2) corrected

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knowingly and fraudulently." (emphasis added); *see United States v. Maturin*, 488 F.3d 657, 662 n.3 (5th Cir. 2007). For bank fraud under 18 U.S.C. § 1344, the prosecution must show beyond a reasonable doubt that the defendant (1) engaged in a scheme or artifice to defraud, or made false statements or misrepresentations to obtain money from; (2) a federally insured financial institution; and (3) *did so knowingly. United States v. Brandon*, 17 F.3d 409, 424 (1st Cir. 1994). For § 1014, "the only specific intent that matters for purposes of § 1014 is the intent to influence the bank's actions." *United States v. Sparks*, 67 F.3d 1145, 1152 (4th Cir. 1995).

The last alleged infraction, § 1001, false statement to a federal agency, does not require an "intent to defraud." While Section 1001 proscribes only deliberate, knowing, willful false statements," it "does not require an intent to defraud-that is, the intent to deprive someone of something by means of deceit." *United States v. Lichenstein*, 610 F.2d 1272, 1276-77 (5th Cir. 1980).

[77] *United States v. Doke*, 171 F.3d 240, 243 (5th Cir. 1999).

[78] Generally, a debtor is entitled to rely on the advice of his bankruptcy counsel where the reliance is reasonable and in good faith. *See Hibernia Nat'l Bank v. Perez*, 124 B.R. 704, 710-11 (E.D. La. 1991), aff'd 954 F.2d 1026 (5th Cir. 1992); *see also First Beverly Bank v. Adeeb* (*In re*

the name within twenty days,[79] arguably a neutral finder of fact could follow our criminal law precedents and infer a lack of bad faith or no intent to defraud.[80]

Judge Porteous's assertion of a good-faith belief in his conduct, and thus a lack of intent to defraud, also tends to weaken the evidentiary basis for the other allegations of fraud relating to his bankruptcy. In fact, no direct evidence of intent to defraud, a necessary element for the bankruptcy fraud allegation under 18 U.S.C. § 152, rebuts the testimony about Judge Porteous's "good-faith."

For example, the record arguably contravenes a finding of intent to defraud for the allegation that Judge Porteous improperly obtained credit during his bankruptcy by using gambling markers and intentionally concealed this credit from his bankruptcy proceedings.

Adeeb), 787 F.2d 1339, 1343 (9th Cir. 1986) (noting that reasonable and good faith reliance on advice of counsel sufficient to show debtor lacked requisite fraudulent intent to revoke or deny discharge); *Beckanstein v. United States*, 232 F.2d 1, 4 (5th Cir. 1956) ("The advice of counsel is also important in determining whether appellant made the statement with a corrupt motive.").

The Special Committee attempts to strip Judge Porteous of this defense by declaring "a federal judge cannot reasonably avail himself of such a defense," Special Committee Report at 18, but this statement appears contrary to the Code of Conduct for United States Judges. According to the Commentary to Canon 5C of the Code of Conduct for United States Judges, "[a] judge has the rights of an ordinary citizen with respect to financial affairs," which arguably includes the right to rely on bankruptcy counsel when such reliance is reasonable and in good faith.

[79] "Recantation may have a bearing on whether an accused perjurer intended to commit the crime." *United States v. McAfee*, 8 F.3d 1010, 1017 (5th Cir. 1993) (internal citations omitted).

[80] Further evidence of a lack of bad faith may be inferred from the facts that Judge Porteous's bankruptcy was completed, all creditors were paid a percentage of their claims, and no creditor opposed Judge Porteous's discharge from bankruptcy. *See* Porteous Hearing Exhibit 1 part 1, Bates No. SC00009-10, SC00015.

The FBI agents noted in their testimony that the casino records involving markers are "very confusing" and "there's certain nuances to each casino,"[81] so good faith disagreement or confusion over the financial definition of a marker seems possible. Judge Porteous testified that he understood casino markers as equivalent to checks, which could be held by a casino for as much as 10 to 30 days before being presented for payment, and not "credit" in the sense intended by the bankruptcy court order. Under Louisiana commercial law, markers are considered "checks" as defined by Louisiana statute.[82] Whether each marker was, under the varying underlying circumstances, an actual extension of credit is debatable; thus, whether Judge Porteous knew or should have known each marker was a forbidden extension of credit within the intention of the court's order is also debatable. Based on the complexity of the marker system, the varying circumstances, and the opportunity for misunderstanding, the evidence may support an inference that Judge Porteous did not knowingly incur credit or intend to deceive the bankruptcy court.

As for Mrs. Porteous's use of the Fleet credit card to charge around $1,100 during bankruptcy, Judge

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[81] SCHT at 296.

[82] *TeleRecovery of Louisiana, Inc. v. Gaulon,* 738 So.2d 662, 667 (La. Ct. App. 1999). I do not suggest that "markers" are necessarily treated as checks and not loans in the bankruptcy context, *see In re Armstrong*, 291 F.3d 517, 523 (8th Cir. 2002), however legal authority for the position that markers should be considered "checks" (even if not in the bankruptcy context) is some support for a good-faith understanding that "markers" would be treated as checks and not credit in the bankruptcy context within Louisiana and the Fifth Circuit.

Porteous's testimony of his ignorance arguably demonstrates a lack of intent to defraud. Judge Porteous, in unrebutted testimony, stated that "my understanding was all the cards were torn up. I did not know she had kept that card active until well after the fact."[83] It is undisputed that Judge Porteous relied heavily upon Mrs. Porteous, who is now deceased, and his secretary to handle his personal bank accounts, credit cards, and personal financial affairs.

Similarly, regarding the failure to disclose assets, Judge Porteous repeatedly noted that he did not fully understand his financial status, and therefore never knowingly misrepresented his bank accounts. First, explaining his non-disclosure of less that $900 total in various accounts, Judge Porteous stated, "[i]t was just inadvertence, not any intent to hide my finances."[84] Other factors corroborate that Judge Porteous was not fully aware of his financial situation; his wife handled their bank accounts and his secretary often paid his bills from her personal account before seeking reimbursement from him. Second, Judge Porteous testified that his failure to report a tax refund of $4143.72, like his use of an alias, was in reliance on the advice of his attorney.[85]

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[83] SCHT at 161.

[84] SCHT at 158. Judge Porteous's non-disclosure of $900 in assets arises out of his representation that a bank account was valued at $100 when it actually contained $559.07, Special Committee Report at 25, and his failure to disclose a Fidelity money market account containing a balance somewhere between $283.42 and $320.29. Special Committee Report at 25.

[85] SCHT at 84.

Judge Porteous testified that this omission, done on the advice of his attorney, was "no intentional act to try and defraud somebody. It just got omitted. I don't know why."[86] His attorney could not recall giving advice on this subject, but his testimony indirectly supports Judge Porteous's contentions. His attorney, in response to a question about his standard practice under these circumstances, stated that "at the time [of Judge Porteous's bankruptcy] . . . [as part of my standard practice,] it was not included in the confirmation order that the debtor turn over either tax returns or tax refunds from year to year as the plan progresses."[87]

The same lack of evidence regarding specific intent also applies to allegations of submitting false statements to Regions bank and bank fraud regarding the renewal of a $5,000 signature loan.[88] Judge Porteous made two statements: (1) that he was not "in the process of filing bankruptcy" and (2) that there had been no "material adverse change in [his] financial condition *as disclosed* in [his] most recent financial statement to lender" (emphasis added). In both of these statements, Judge Porteous arguably did not intend to defraud or influence the bank because, in unrebutted testimony, he

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[86] SCHT at 84.

[87] SCHT at 438.

[88] Alleged against Judge Porteous are violations of both 18 U.S.C. § 1014, false statements to a financial institution, and 18 U.S.C. § 1344, bank fraud; the evidence is insufficient to support these charges' respective specific intent requirements, *i.e.*, the evidence does not support a finding of specific intent to influence the bank or specific intent to defraud.

903 testified that he actually believed the two statements
904 were true when he filed the renewal form with the bank,
905 and the record tends to supports this "good-faith"
906 assertion. The loan renewal form was completed "a couple
907 of months before [he filed] bankruptcy,"[89] during a period
908 when Judge Porteous and his lawyer were actively pursuing
909 a work-out with debtors, *so as to avoid bankruptcy.*
910 Judge Porteous testified: "I didn't mean [the statement]
911 to be false, because I wasn't in the process of declaring
912 - I was doing everything I could not to file a
913 bankruptcy. That's why I attempted for so long to do a
914 workout."[90] There is evidence and legal authority
915 establishing Judge Porteous's correct understanding that
916 the work-out is an alternative to avoid bankruptcy.[91]
917 Similarly, Judge Porteous's statement to Regions Bank
918 that there was "no material adverse change" to his
919 financial status as disclosed by financial statements
920 also appears to have been true; though his finances were

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[89] SCHT at 108.

[90] SCHT at 109.

[91] In fact, the very "workout" letter that the Special Committee points to as evidence of Judge Porteous's intent to file bankruptcy specifically stated that it was an attempt to "workout of the debts . . . by settlement and release *as opposed to the filing of bankruptcy.*" SCHT at 280 (emphasis added). The very purpose of a "work-out" agreement is for use outside bankruptcy. *See In re Colonial Ford, Inc.*, 24 B.R. 1014 (Bankr. Utah 1982) ("Congress designed the Code, in large measure, to encourage workouts in the first instance, with refuge in bankruptcy as a last resort."); *see also In re Pengo Indus., Inc.*, 962 F.2d 543, 549 (5th Cir. 1992) ("We strongly disfavor a judicial interpretation of the Bankruptcy Code that contravenes the substantial congressional policy favoring out-of-court consensual workouts."). The testimony of Judge Porteous's bankruptcy attorney, Lightfoot, corroborates Judge Porteous's: "we first started on a workout proposal . . . hoping to avoid bankruptcy" by looking into leveraging home equity and other possible strategies. SCHT at 433-34.

in poor shape at the time he renewed the loan, the same was true at the time he initially sought the loan. Therefore, he may not have believed his financial condition was any worse in respect to his ability to repay a $5000 bank loan than it was a year before when the loan was first made. Moreover, his statement appears to have been literally true; the financial statement forms were never filled out in the initial loan application or in the renewal application. He was only obliged to provide financial statements "as Lender may reasonably request," and there is no evidence showing the Lender so requested. Thus, no material change was technically reflected in the financial condition information *as disclosed* to the Lender, since both initial and renewal applications contained identical blank financial statement forms.

In respect to each of these criminal allegations above, the evidence permits and supports the argument that the record lacks evidence to support these allegations on a critical element: evidence of an intent to defraud or intent to influence the bank.

Further, the record demonstrates several mitigating considerations in respect to the remaining allegation and finding that Judge Porteous failed to carefully update his financial disclosure statements to provide an accurate picture of his debt and gifts from friends in the required financial disclosures under 5 U.S.C. App. 4 § 101, or the "Ethics in Government Act," in violation of 18 U.S.C. § 1001. This statute does not require an intent

to deceive for its violation. Without an intent to deceive element, violations of this statute do not entail the moral culpability associated with the previous alleged criminal violations.[92] Moreover, Judge Porteous's violation of this provision arguably does not arise to a level of seriousness that would trigger a criminal investigation and/or indictment.[93] The Department of Justice Manual restricts discretion to prosecute to violations of 18 U.S.C. § 1001 when nondisclosures "conceal significant underlying wrongdoing."[94] It is not alleged that any impropriety was concealed other than a possible appearance of impropriety (not actual impropriety) created by the unreported gifts and the level of his already-substantial reported private debt.

As I have discussed above, the evidentiary support for the specific intent element is weak in these criminal allegations,[95] save the least serious alleged violation. As for the least serious infraction, it arguably does not even warrant criminal investigation. Moreover, the DOJ and a grand jury investigated similar charges involving

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[92] *McBride v. United States*, 225 F.2d 249, 254-55 (5th Cir. 1955) (noting that § 1001 does not require proof of an "evil" intent).

[93] That Judge Porteous's actions did not, in fact, trigger an investigation further supports this conclusion.

[94] *United States v. Blackley*, 986 F. Supp. 607, 613 (D.D.C. 1997). While the probable lack of criminal prosecution for the violation in this case does not excuse a finding of a violation, a violation that fails to trigger criminal prosecution under DOJ internal policy is persuasive evidence that such a violation is not an impeachable high crime or misdemeanor.

[95] The final allegation of conspiracy is subject to the same analysis as the independent charges.

the same evidence for nearly five years and did not find sufficient evidence to submit or obtain an indictment on any of the charges.

5.

There is reason to conclude that due process concerns render the entire record compiled by the special committee, and considered by the judicial council majority, an unreliable basis for a certification of possible impeachment.

Each judicial council must demonstrate that it has fully protected the values of judicial independence and integrity in every disciplinary proceeding; otherwise, the prospect of judges evaluating each other's integrity risks chilling to an extreme degree individual judges' exercise of independent judgment as a matter of fairness to litigants.[96] In recognition of this, Congress drafted the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 to control "potential excesses" of a circuit council by "requir[ing] that minimal due process rights be accorded any judicial officer whose actions or state of health are being investigated by a circuit council."[97] Accordingly, each judicial council must adopt rules requiring that adequate prior notice of any investigation be given to the judge complained against and that the judge be afforded an opportunity to

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[96] The Federal Impeachment Process, *supra* note 17, at 101-02.

[97] H.R. Rep. No. 96-1313, at 14 (1980).

appear in person or by counsel at investigating panel proceedings, to present oral and documentary evidence, to compel the attendance of witnesses or the production of documents, to cross-examine witnesses, and to present argument orally or in writing.[98] Additionally, this judicial council, prior to this case, adopted other rules designed to lend fairness and due process to the judicial disciplinary proceedings.[99]

Judge Porteous was afforded most of these rights, but he was not provided with all that would appear to be required for minimal due process and fairness. First, Judge Porteous was not represented by an attorney at either the Special Committee hearing or the Judicial Council hearing.[100] Judge Porteous's former attorney resigned two weeks before the Special Committee hearings in which all of the evidence was taken; the judge's motion for continuance and for time to obtain new counsel was denied; and he was forced to appear without the assistance of counsel before the committee, which retained two former United States Attorneys to present the case for Judge Porteous's sanctioning and possible

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[98] 28 U.S.C. § 358(a)&(b); H.R. Rep. No. 96-1313, at 14 (1980) ("The net effect is . . . that the possibility of one group of federal judges arbitrarily 'ganging up' or 'hazing' another is prevented." (citing *Chandler v. Judicial Council*, *supra* 398 U.S. at 140 (Douglas, dissenting).)

[99] *See* Fifth Circuit Rules Governing Complaints of Judicial Misconduct or Disability, Rule 11.

[100] *See id.* at 11(e); *see also* Judicial Conference Draft Rules Governing Judicial Conduct and Disability Proceedings, Rule 15(e) ("Representation by Counsel. The subject judge may choose to be represented by counsel in the exercise of any of the rights enumerated in this Rule. The costs of such representation may be borne by the United States as provided in Rule 20(e).")

impeachment. Before the Special Committee, the attorneys compiled a voluminous record in an effort to prove violations of the Code of Judicial Conduct canons and several complex federal criminal statutes. Judge Porteous, representing himself, presented very little evidence and failed to cross examine vigorously the witnesses called by the committee.

Second, at the beginning of the Special Committee hearing, Judge Porteous moved to exclude from the proceedings any evidence of his alleged misconduct that occurred prior to his appointment and confirmation as a federal district court judge in 1994. The Chief Judge, for the Special Committee, denied his motion, and as a result the record, upon which the Special Committee's recommendations are made and the Judicial Council's determinations are based, improperly contains evidence of his alleged misconduct between 1984 and 1994, when he was a state judge and before he took office as an Article III judge. As discussed above and conceded by the special committee, this conduct is beyond the authority of the judicial council[101] and cannot be considered by Congress as grounds for its impeachment decision.[102] Thus, this evidence did nothing but prejudice the record against Judge Porteous by raising extraneous allegations.

5.

[101] *See* Special Committee Response to Reply Memorandum at 4.

[102] *See supra* note 63.

For these reasons, I respectfully dissent from the Judicial Council majority's certification of possible grounds for impeachment and instead would issue a public reprimand subject to strict precautionary conditions.[103]

[103] For these same reasons, I had, prior to the certification of this issue, respectfully recommended to the Judicial Council that Judge Porteous's conduct warrants a public reprimand but not certification to the Judicial Conference as possible grounds for impeachment. Accordingly, I recommend 1) that Judge Porteous be reprimanded by means of public announcement; 2) that on a temporary basis for a period of two years no criminal matters in which the United States is a party be assigned to him; 3) that he be required to enter a contract with the Lawyer Assistance Program of the Louisiana State Bar Association for counseling, monitoring, and such programs as it may require for recovery and rehabilitation from alcohol abuse and gambling addiction for a period of not less than five (5) years; 4) that, if such restrictions are not already imposed by the Lawyer Assistance Program, he be required to undergo alcohol testing and treatment and be prohibited from entering any gambling establishment, and 5) that he be required to make such written and personal reports to a monitor to be appointed by the Chief Circuit Judge in respect to his recovery, rehabilitation and financial condition, upon terms and conditions to be specified by the monitor during his tenure in office. This resolution was ultimately rejected, though Judge Porteous was amenable to such measures, *See* Judge Porteous's Reply Memorandum at 13.

It is unfortunate that the Judicial Council did not reach such a collegial settlement on this basis because a Judicial Council should strive to resolve these matters collegially when it can. *See Hastings,* 593 F. Supp. at 1383. Moreover, a resolution by reprimand is consonant with the circumstances surrounding Judge Porteous's transgressions, his contrition for those transgressions, and his strong commitment to turning his life around. Judge Porteous admits he committed non-impeachable transgressions; he "sincerely apologizes" for that conduct, and acknowledges he is "ultimately responsible for [his] actions and lapses." Judge Porteous's Reply Memorandum at 13. However, a number of undiscussed tragic mitigating factors surround Judge Porteous's actions. His transgressions occurred at a time when he was beset by undiagnosed depression, alcoholism, and gambling addiction. *Id.* at 2. These problems were exacerbated by the worsening state of his finances, his loss of his home to Hurricane Katrina, and his wife's sudden death soon thereafter. *Id.* at 12.

In reaction to this string of misfortune, though, Judge Porteous's conduct in the two years after his wife's death in 2005 displays Judge Porteous' strong commitment to change his life and eliminate the causes of his past indiscretions. *Id.* at 2. He has not gambled for over two years and has been free from alcohol for at least twenty months. *Id.* at 2; *see also* SCHT at 481. He also is continuing his over two-year treatment for his depression. Judge Porteous's Reply Memorandum at 2. At the time of he filed his Reply Memorandum, Judge Porteous was in the process of signing a five-year contract with the Louisiana Bar's Lawyers Assistance Program, which involves weekly Alcoholics Anonymous meetings, meetings with support groups, meetings with a monitor, and random alcohol testing. *Id.* at 2. The Chief Judge and other judges of the Eastern District of Louisiana have expressed their belief that Judge Porteous has always performed his judicial duty with integrity and their confidence in his ability to carry out his

judicial responsibilities with fairness, impartiality and competence. They also note Judge Porteous's commitment to turning his life around. For these reasons, I believe that a public reprimand subject to strict precautionary conditions is the appropriate sanction in this case.

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REPORT BY THE SPECIAL INVESTIGATORY COMMITTEE
TO THE JUDICIAL COUNCIL
OF THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

DOCKET NO. 07-05-351-0085

In the Matter of Judge G. Thomas Porteous, Jr.
United States District Judge
Eastern District of Louisiana

REPLY MEMORANDUM

Submitted

December 5, 2007

CONFIDENTIAL

EXHIBIT 3

HP Exhibit 6(c)

MAY IT PLEASE THE COMMITTEE:

At the very outset let me state my sincere apology and regret for my actions which have brought me before the Committee.

After two years of therapy following my wife's death, I am just beginning to understand my difficulties. My health care professionals are of the opinion that I had a pre-disposition and genetic cause for my depression. This is evidenced based upon my father's suicide and one of my son's need for in patient treatment. My attempts to ease the situation led to my dependence on alcohol, itself a depressant, which eased the pain only until the next morning when the vicious cycle would begin anew. These problems became exacerbated because of financial difficulties and gambling. Each and every day of my life the vicious cycle kept repeating itself. I bring this up not as an excuse for my actions, but to give the Committee and the Judicial Council some insight into my history. The bottom line is that my therapist believes I have suffered from anxiety and depression for a substantial period of my life.

That being said, I have finally begun putting my life back in order. I have not gambled for over two years and have been free from alcohol for twenty months. I recognize this will be a continuing battle, but with firm determination and the support of my family, I am committed to changing my life for the better.

As part of my lifestyle changes, I am signing a contract with the Lawyers Assistance Program. This contract will be for five years and will require weekly AA meetings, weekly meeting with the lawyer support group, monthly meeting with my monitor, and random blood and/or urine specimen testing. If the Council should decide that a reprimand is an appropriate sanction, the contract will provide appropriate monitoring well past my point of retirement and

ensure that my commitment to sobriety is real.

PRELIMINARY ISSUES

First, as raised before the Committee initially, I re-urge dismissal of several of the charges as being untimely. Rule 1 (D) of the Rules Governing Complaints of Judicial Misconduct or Disability provides for dismissal if the delay in filing prevents fair consideration of the matter. The portion of the complaint involving my actions on the state bench are at the best thirteen years ago back to twenty-three years ago. I respectfully suggest that these allegations are clearly time-barred.

Additionally, the allegation of misconduct in 1999 is eight years old and also appears to be untimely. Further, it appears that the Department of Justice had this material as far back as 2001, and their actions caused the delay in bringing this charge to the Committee.

Second, during the Committee hearings, I was required to undergo hand-wanding each time I entered the building. I asked the Committee if this was due to some information of a threat or because of a concern about my mental stability. No satisfactory answer was provided. I raise this issue because the Committee several times in its opinion suggested I had no disability. If, however, the reason for the searching was because of my mental instability this would clearly have relevance to my request for disability retirement.

Third, at the start of the hearing, I moved to have the prosecutors from the Department of Justice Office of Public Integrity removed from the hearing, as well as, the FBI agents. The Committee response was that they represented the complainant. The opinion of the Committee also references the Public Integrity Section as the complainant. However, when I asked to call a Department of Justice representative as a witness that request was denied. This despite Rule

10 (C) which states the complainant will be a witness. This action by the Committee precluded me from inquiring about the length of the investigation, my cooperation in agreeing to extend the statute of limitations, their reasons for their decision not to prosecute, whether they had favorable evidence, their contacts with the Chief Judge of the Circuit wherein no objection to my disability was discussed, their contacts with the bankruptcy trustee, and many other areas. This denial was clearly contrary to the plain language of the Rules Governing Complaints.

Fourth, in the course of the opinion, the Committee at various times made reference to various resolutions which would have eliminated the need for a hearing. While believing that references to compromise are inappropriate under the Rules of Evidence which are applicable to this proceeding, I must comment on the last suggestion that I would resign and the matter would be closed as moot. The Committee fails to mention that the offer also required a consent to a Federal disbarment.

Finally, I again respectfully submit that the opinions of my health care professionals support a finding of disability pursuant to the Rules. The only difference is that I am not fighting a finding of disability. I make this suggestion in spite of the findings of Dr. Gabbard, the psychiatrist for the Committee. Dr. Gabbard's findings are the result of a two and a half day evaluation and only reflect my condition during that time period. His findings fail to take into consideration the findings of my doctors that at multiple times during my twenty month treatment I have appeared quite depressed and anxious. Their opinion is that I am disabled. When one considers the sudden death of my wife, the loss and rebuilding of my home, my separation from my family during the rebuilding, the pressures of an investigation which lasted for approximately five years and the daily pressures of the bench it is not hard to recognize that these stressors have

taken a toll on me. Accordingly, I renew my request that the Committee and the Council make a finding of disability and so certify the matter. This finding will mean my immediate removal from the bench.

BANKRUPTCY FRAUD AND VIOLATIONS OF THE ORDER OF THE BANKRUPTCY COURT

In its original complaint, the U.S. Department of Justice set out numerous grounds for their decision not to prosecute. The bottom line in their decision simply put is that they could not prove a crime was committed. Importantly, they recognized that intent to deceive could not be proven. This would also suggest that intent to defraud could not be proven. Heavy burden of proof, unanimous verdict, and materiality were also mentioned. Again, this is simply legal linguistics for being unable to prove a crime was committed. By filing a complaint, they seek to avoid their constitutionally mandated burden of proof as is applicable in every case and attempt to prove criminal conduct via a civil proceeding.

The incorrect names in the original filing were not done to defraud any creditor, but rather to avoid the embarrassment of news articles. The articles were printed anyway. No creditor was defrauded by the original petition, indeed no creditor even received the incorrect filing. Hence, there was no illegal purpose for the filing. Also the names were corrected within two weeks of the original filing.

The impermissible debt allegations deal with gambling markers. By its own definition, the Committee recognizes that the marker operates as a check. Using this definition, there is no extension of credit. The markers did not affect the net payout to the creditors.

At the time of the filing, I did have a gambling problem. Upon filing of the petition, I did

not immediately stop gambling. Such is the nature of this addiction. However, even with analysis by the FBI, they could not establish that winnings from other casinos actually offset the markers they found. Such was their admission upon questioning by Judge Benavides.

With respect to the Fleet Credit Card, I must admit that it was in my wife's name and I did not know she was using it post bankruptcy. I also did not recall paying off the card immediately prior to filing for bankruptcy. In any event, gambling addiction was my wife's only vice. She also did not turn off the gambling switch with the filing of the bankruptcy.

The other bankruptcy misrepresentations involve tax refunds, omission of the Fidelity money market account, payment of the Fleet Credit Card, understating income (higher net income when FICA maximum is met), markers, and gambling losses.

As to the tax refund, I maintain my position that I told Mr. Lightfoot about it and he said to place it in my account, but if requested by the bankruptcy trustee, I would have to surrender it. As to this area, Lightfoot could only say he did not recall the conversation.

Fidelity was an oversight of an account containing $283.42. This was not intentionally omitted with the intent to defraud any creditor and did alter the percentage payback.

The Fleet Credit Card was omitted and I did not recall paying it off or my wife's continued use of it.

The understating of income was not intentional. Although, a pay stub was included prior to paying of the maximum FICA, that same pay stub showed my ultimate gross income for the year. In any event, the nominal increase in income would not have affected the ultimate percentage payout as is reflected in the Beaulieu letter.

The issue of gambling markers and losses has previously been discussed. It is important

to note that when a person brings chips to the cashier for cash, the cashier does not require any form of identification. Hence, no record of the customers winnings is actually recorded.

The Department of Justice brought all of these areas to the attention of the bankruptcy trustee prior to my discharge (Beaulieu's 302's and accompanying letters). In his staff attorney's letter of April 1, 2004, to Wayne Horner of the FBI he stated, "You may file an objection to the Trustee's Final Account or you may provide Mr. Beaulieu with evidence of wrongdoing and same will be investigated." Neither option was selected by the FBI and/or Department of Justice. Had they really believed that bankruptcy fraud existed or wanted to help the creditors obtain a greater payout, they had every opportunity to do so. Additionally, no action was taken by the trustee even with the information provided by the Department of Justice. Again, this would appear to indicate that they felt there was insufficient evidence of bankruptcy fraud. Quite to the contrary after an additional three years, they reached the same conclusion that no prosecution was warranted.

BANK FRAUD INVOLVING A LOAN AT REGIONS BANK

Despite the findings of the Committee, it was never my intention to harm Regions Bank. When the potential payout letters were sent to the other creditors, it was my honest intention to negotiate a settlement with them and still pay the bank 100% of my debt. The simple reason for this was my friendship with Buddy Butler and my longstanding relationship with the bank. This was not part of a bankruptcy payout, but rather an attempt to avoid bankruptcy if at all possible. These efforts continued until early 2001 when it was obvious a resolution could not be accomplished. The loan extension application did not result in any additional funds being disbursed.

Although the Committee has questioned my reasons for my actions, there was never any ill purpose or attempt to defraud.

In hindsight, I now understand how converting my loan to a secured debt in January, 2001, would have accomplished my intentions. However, had that occurred, I am positive I would now stand accused of granting the bank a preference to the detriment of the other creditors.

Essentially, I found myself in a Catch 22 position. However, again I must state that I never had any intention to harm the bank. By declining prosecution the Department of Justice undoubtedly has reached the same conclusion. However, now it appears that the Committee has found a criminal violation in a civil proceeding.

Again, in hindsight, my attempts to pay the bank my full debt may have been confusing and illogical. However, at the time, I fully believed I could work out my other debts and still pay the bank 100%. Defrauding the bank was never my intention.

RECEIPT OF CASH, GIFTS AND OTHER FORMS OF REMUNERATION

I have never seriously disputed the fact that at different times during my tenure on the State bench that Amato & Creely periodically helped me by giving me financial assistance. There never has been any suggestion or claim that their help in any way constituted a bribe. Indeed, at the beginning of the hearing before the Committee, Mr. Woods stated, upon questioning:

Judge Porteous: You make no claim alleging bribery.

Mr. Woods: That's correct. (p. 21)

During the course of the hearing and after almost five years of investigation by the FBI, there has been no evidence or information gathered which indicates that my dealings with Amato & Creely in court were anything but fair and impartial. No evidence of favoritism or impropriety has been found or presented. Indeed, subsequent to the 1999 event, Mr. Creely admitted he had lost a decision in my Court but that decision was later reversed by the Fifth Circuit.

Even in the Liljeberg matter, there has been no claim of a lack of fairness or impartiality. During Mr. Mole's testimony, he unequivocally stated that I was a gentleman, professional, polite and let him argue his case. He also testified that I was a "very good trial judge". (p.187) Even when I lost my temper at one point during the trial, I returned to Court after the weekend recess and allowed Mr. Mole to ask additional questions without interruption.

At the conclusion of the trial, a judgment was rendered in favor of the plaintiff but there has been no evidence that my friendship with the lawyers on both sides played any part in that decision.

With respect to the 1999 event, I have not disputed that they helped me. The Committee, however, has attempted to suggest that the event involved $4000.00 - $5000.00. I believe this is because when I returned from the bachelor party I deposited $5000.00 in winnings from that trip. Actually, the $5000.00 was used to pay advances on my credit cards that were obtained during the trip. Since the Committee has no direct evidence of receiving that amount from Amato or Creely, they have tried to infer that the amount came from them. In fact, during his questioning, Mr. Creely never gave any indication that he had given me $5000.00 during the bachelor party.

With respect to paying for my room and one dinner with the whole group, I never considered this as anything but friendship. Indeed, during the trip, I am sure I bought drinks at

various times and believe I bought one lunch when we were all together. In any event, Creely also testified that my rulings on the bench had no relationship to my dealings with them. (p.231)

There never was a Curatorship Scheme. During my questioning, Creely testified he had no reason to doubt that I sent curatorships to him in order to help him in giving Raphael something to do and in an attempt to help defray some of his costs. (p. 232 - 233)

The unexplained cash balances and transactions have been presented in an attempt to suggest that I received unaccounted for cash. The FBI, after years of investigation and analysis, has been unable to link the alleged amounts to any criminal or unlawful activities and now is attempting to simply assert they were improper. I did not receive any cash from any illegal source at any time.

As for Mrs. Danos, she tried to explain during her testimony the differences. Her testimony revealed that she was placing reimbursement for her sons' bills into her account and paying their bills because they did not have checking accounts at that time. This same testimony was provided during Mrs. Danos' grand jury testimony and the Department of Justice still elected not to prosecute.

FINANCIAL DISCLOSURE REPORT
VIOLATIONS

VIOLATIONS OF THE CANONS OF
THE CODE OF CONDUCT FOR
UNITED STATES JUDGES

Since there is much crossover in the above referenced sections, I will address both in this section.

I agree completely with the Committee when it found, "Porteous was in a downward

financial spiral by the time he had engaged Lightfoot in the summer of 2000, and was on the brink of bankruptcy..."

The reality is that the darkest and most distressing period in my life began in 1999 and tragically continued with the loss of my family home in Hurricane Katrina, physical separation from our family and the sudden death of my wife in December, 2005. It was also during this period when the criminal investigation was occurring.

During this period, my gambling was clearly a problem and my self medication with alcohol increased. This had the effect of me neglecting my duties and paying little, if any, attention to the requirements of my work and reporting requirements. The impending embarrassment of filing what did become a well reported bankruptcy served to worsen my condition. I am only beginning to understand my situation after almost two years of therapy.

Again, I have no excuse for the inaccurate reports, but respectfully ask the Committee and the Council to at least look at my worsening mental status during this period. It was never my intention to commit a fraud or willfully ignore my responsibilities.

All of my dealings with the attorneys listed in the Report of the Committee were as a friend to a friend. No gift was given as a lawyer to a judge. I have been friends with all of the attorneys for my entire legal and judicial career. As noted, I am the godfather to one of Don Gardner's daughters. I performed the wedding ceremony for one of Creely's marriages. I have known Amato for thirty plus years and knew his children from an early age. In fact, his daughter clerked for me for the 2002 – 2003 term. Levenson is likewise a longtime friend. I also know his family. I helped him have his daughter appear in the Washington Mardi Gras Ball as a princess. My friendship with Forstall is similar. I bring this up not to justify my actions, but to show that

my contact with all of the lawyers was predominantly as friend helping friend with no expectation of receiving anything in return. Clearly, this again does not justify my lapses in filing the financial reports or adherence to the Code of Conduct, but it should provide a picture of our real relationships.

On page 64 of the Report of the Committee when discussing whether I've been fair and impartial in every proceeding before me, the Committee stated, "The lawyers who lost the recusal motion in Liljiberg would probably take issue with that statement". However, as previously discussed, Mr. Mole agreed that I was a gentlemen, professional, polite and let him argue his case. In conclusion, he stated, "I thought you were a very good trial judge". (p.187).

Why do I deserve mercy and a chance to finish my judicial career and when did my life change? As tragic as Hurricane Katrina was on life, it was during the four months post the storm when my wife and I got the chance to truly share our life and discuss what we needed to do in order to make our life together better. From August, 2005, through December, 2005, my wife and I were inseparable and spent more time together than almost any point in our lives. We cried together, laughed together and generally renewed our commitments and love for one another. Tragically, this ended with her sudden death on December 22, 2005, one day before her birthday. What helped with this sad situation was the four months we did share together. In April, 2006, I took the first steps in permanently changing my life for the better. As the remaining parent, I wanted to make sure that the remainder of my life was clean, sober and of help to my children and grandchildren. My continuing therapy has opened my eyes to my past and given me hope for the future. What is important in my life are my children, grandchildren, family and career. I now realize that I have been given a second chance to be a better person. I do not intend to squander

that chance.

I beg the Committee and the Council to please give me a second chance and recommend a reprimand. I sincerely apologize for all of my transgressions. I am ultimately responsible for my actions and lapses.

If a reprimand, whether public or private, is ordered, I would agree to a Judge Monitor to whom I would report and who could supervise my activities. This would give the Committee an extra level of supervision to ensure that my commitments and intentions are not shallow promises. This would also be in conjunction with my AA monitor's duties.

The portion of the report dealing with removal of cases involving the United States Government is unnecessary since I voluntarily withdrew from those cases several years ago and did not intend to take them again until this matter was terminated. Also, if the Committee or Council believe I should be removed from all cases pending a final ruling herein, I will abide by that decision.

In conclusion, let me again apologize and ask this Committee to recognize my commitment to change for the better. I can only pray that the Committee and Council will allow me the opportunity to prove my worth and complete my tenure on the Bench.

I am comforted by the fact that since my return to the Bench in June, 2007, pursuant to Chief Judge Jones' order, I have been contacted by innumerable attorneys who have expressed their support for me and said how happy they were that I am back. Clearly, I have not lost the support and trust of the bar as a whole. With your mercy and help, I beg that I be allowed to

continue earning and keeping their support and trust.

Respectfully Submitted,

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